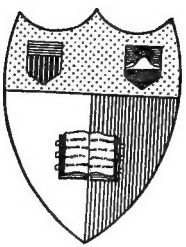

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DECLARATIONS OF WAR

SEVERANCES OF DIPLOMATIC RELATIONS

1914–1918

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

Bind out at beginning

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CHART OF INTERNATIONAL RELATIONS IN THE WAR.

[Key: W, war; S, severance of diplomatic relations; N, neutrality.]

	Germany.	Austria-Hungary.	Bulgaria.	Turkey.
Argentine Republic	N	N	N	N
Belgium	W	W	N	S
Bolivia	S	N	N	N
Brazil	W	N	N	N
Chile	N	N	N	N
China	W	W	N	N
Colombia	N	N	N	N
Costa Rica	W	N	N	N
Cuba	W	W	N	N
Denmark	N	N	N	N
Dominican Republic	N	N	N	N
Ecuador	S	N	N	N
France	W	W	W	W
Great Britain	W	W	W	W
Greece	W	S	W	S
Guatemala	W	N	N	N
Haiti	W	N	N	N
Honduras	W	N	N	N
Italy	W	W	W	W
Japan	W	S	N	N
Liberia	W	N	N	N
Luxemburg	N	N	N	N
Mexico	N	N	N	N
Montenegro	S	W	N	W
Netherlands	N	N	N	N
Nicaragua	W	W	N	N
Norway	N	N	N	N
Panama	W	W	N	N
Paraguay	N	N	N	N
Persia	N	N	N	N
Peru	S	N	N	N
Portugal	W	S	N	N
Roumania	W	W	W	W
Russia	W	W	W	W
Salvador	N	N	N	N
San Marino	N	N	N	N
Serbia	W	W	W	W
Siam	W	W	N	N
Spain	N	N	N	N
Sweden	N	N	N	N
Switzerland	N	N	N	N
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Venezuela	N	N	N	N

DECLARATIONS OF WAR.

ALPHABETICAL LIST.

CHRONOLOGICAL LIST.

1914.

28 July	Austria-Hungary	vs. Serbia.
1 August	Germany	vs. Russia.
3 August	France	vs. Germany.
3 August	Germany	vs France.
4 August	Germany	vs. Belgium.
4 August	Great Britain	vs. Germany.
6 August	Austria-Hungary	vs. Russia.
6 August	Serbia	vs. Germany.
7 August	Montenegro	vs. Austria-Hungary.
8 August	Austria-Hungary	vs. Montenegro.
9 August	Montenegro	vs. Germany.
12 August (midnight)	France	vs. Austria-Hungary.
12 August (midnight)	Great Britain	vs. Austria-Hungary.
22 August	Austria-Hungary	vs. Belgium.
(Received by Belgium 28 August.)		
23 August	Japan	vs. Germany.
29 October	France	vs. Turkey.
3 November	Russia	vs. Turkey.
5 November	Great Britain	vs. Turkey.

1914.

11 November	Turkey	vs.	Allies. (Spoke of it as a holy war against Serbia and her allies—France, Great Britain, Russia.)
23 November	Portugal	vs.	Germany. (Resolution passed authorizing invervention as an ally of England.)

1915.

8 January	Serbia	vs.	Turkey. (Treaties declared terminated from 1 December, 1914.)
19 May	Portugal	vs.	Germany. (Military aid granted.)
24 May	Italy	vs.	Austria-Hungary.
21 August	Italy	vs.	Turkey.
14 October	Bulgaria	vs.	Serbia.
14 October	Serbia	vs.	Bulgaria.
15 October	Great Britain	vs.	Bulgaria.
16 October	France	vs.	Bulgaria.
19 October	Russia	vs.	Bulgaria.
19 October	Italy	vs.	Bulgaria.

1916.

9 March	Germany	vs.	Portugal.
27 August	Roumania	vs.	Austria-Hungary. (Allies of Austria also considered it a declaration of war.)
28 August	Germany	vs.	Roumania.
28 August	Italy	vs.	Germany.
29 August	Turkey	vs.	Roumania.
1 September	Bulgaria	vs.	Roumania.
24 November	Greece (Provisional Government)	vs.	Germany.

1917.

6 April	United States	vs.	Germany.
7 April	Cuba	vs.	Germany.
7 April	Panama	vs.	Germany.
2 July	Greece (Government of Alexander)	vs.	Bulgaria.
2 July	Greece (Government of Alexander)	vs.	Germany.
22 July	Siam	vs.	Austria-Hungary.
22 July	Siam	vs.	Germany.
4 August	Liberia	vs.	Germany.
14 August	China	vs.	Austria-Hungary.
14 August	China	vs.	Germany.
26 October	Brazil	vs.	Germany.
7 December	United States	vs.	Austria-Hungary.
10 December	Panama	vs.	Austria-Hungary.
16 December	Cuba	vs.	Austria-Hungary.

1918.

20 April	Guatemala	vs. Germany.
7 May	Nicaragua	vs. Germany.
8 May	Nicaragua	vs. Austria-Hungary.
23 May	Costa Rica	vs. Germany.
12 July	Haiti	vs. Germany.
19 July	Honduras	vs. Germany.

SEVERANCES OF DIPLOMATIC RELATIONS.

ALPHABETICAL LIST.

CHRONOLOGICAL LIST.

10 August, 1914	France	vs. Austria-Hungary.
23 August, 1914	Germany	vs. Japan
24 August, 1914	Austria-Hungary	vs. Japan.
25 August, 1914	Japan	vs. Austria-Hungary.
30 October, 1914	Great Britain	vs. Turkey.
30 October, 1914	France	vs. Turkey.
30 October, 1914	Russia	vs. Turkey.
6 November, 1914	Turkey	vs. Belgium.
23 May, 1915	Germany	vs. Italy.
5 October, 1915	Russia	vs. Bulgaria.
13 October, 1915	Great Britain	vs. Bulgaria.
15 March, 1916	Austria-Hungary	vs. Portugal.
30 August, 1916	Roumania	vs. Bulgaria.
3 February, 1917	United States	vs. Germany.
14 March, 1917	China	vs. Germany.
8 April, 1917	Austria-Hungary	vs. United States.
11 April, 1917	Brazil	vs. Germany.
13 April, 1917	Bolivia	vs. Germany.
20 April, 1917	Turkey	vs. United States.
27 April, 1917	Guatemala	vs. Germany.
5 May, 1917	Liberia	vs. Germany.
17 May, 1917	Honduras	vs. Germany.
18 May, 1917	Nicaragua	vs. Germany.
16 June, 1917	Haiti	vs. Germany.
29 June, 1917	Greece	vs. Germany.
2 July, 1917	Greece	vs. Austria-Hungary.
2 July, 1917	Greece	vs. Turkey.
21 September, 1917	Costa Rica	vs. Germany.
5 October, 1917	Peru	vs. Germany.
7 October, 1917	Uruguay	vs. Germany.
7 December, 1917	Ecuador	vs. Germany.
28 January, 1918	Russia	vs. Roumania.

DECLARATIONS OF WAR.

AUSTRIA-HUNGARY.

AUSTRIA-HUNGARY against BELGIUM.

Declaration of war against Belgium, 22 August, 1914.

[Austro-Hungarian Red Book, LXVII; see also Belgian Gray Book, No. 77, under date of reception, 28 August, 1914.]

Count Berchtold to Count Clary, Brussels.

[Telegram.]

VIENNA, *22 August, 1914.*

I request you to inform the royal Belgian minister of foreign affairs without delay, as follows:

By order of my Government I have the honor to notify you, as follows:

In view of the fact that Belgium, having refused to accept the propositions addressed to her on several occasions by Germany, is now in military cooperation with France and Great Britain, both of which have declared war on Austria-Hungary; and in view of the recently established fact that Austrian and Hungarian subjects resident in Belgium have, under the eyes of the royal authorities, been treated in a manner contrary to the most primitive laws of humanity, and inadmissible even toward subjects of a hostile State, Austria-Hungary is necessarily compelled to break off diplomatic relations and considers herself from now on in a state of war with Belgium.

I leave the country with the staff of the legation and place the subjects of my country under the protection of the minister of the United States of America in Belgium.

The Imperial and Royal Government has handed his passports to Count Errembault de Dudzeele.

AUSTRIA-HUNGARY against MONTENEGRO.

There seems to be no formal declaration of war. The following is from the London Times, 12 August, 1914, p. 6, c.:

[London Times, Aug. 12, 1914, p. 6, c.]

NISH, *9 August, 1914.*

The Montenegrin Government has handed the German minister his passports, and hostilities with Austria began yesterday. The Austrian fleet has bombarded Antivari.

AUSTRIA-HUNGARY against RUSSIA.

Declaration of war against Russia, 6 p. m., 6 August, 1914.[1]

[Austro-Hungarian Red Book, LIX; see also Russian Orange Book, No. 79.]

Count Berchtold to Count Szápáry, St. Petersburg.

[Telegram.]

VIENNA, *5 August, 1914.*

You are instructed to hand the following note to the minister of foreign affairs:

By order of his Government the undersigned ambassador of Austria-Hungary has the honor to notify his excellency the Russian minister of foreign affairs as follows:

"In view of the threatening attitude assumed by Russia in the conflict between the Austro-Hungarian monarchy and Serbia, and in view of the fact that, in consequence of this conflict and according to a communication of the Berlin cabinet, Russia has considered it necessary to open hostilities against Germany; furthermore, in view of the fact that the latter consequently has entered into a state of war with the former power, Austria-Hungary considers herself equally in a state of war with Russia."

After having presented this note you will ask for the return of your passports and take your departure without delay accompanied by the entire staff of the embassy, with the sole exception of those officials who may have to remain.

Simultaneously passports are being handed to M. Schebeko.

AUSTRIA-HUNGARY against SERBIA.

Declaration of war against Serbia, noon, 28 July, 1914.

[Austro-Hungarian Red Book XXXVII; see also Serbian Blue Book, No. 45.]

Count Berchtold to the Royal Serbian Foreign Office, Belgrade.

[Telegram.]

VIENNA, *28 July, 1914.*

The Royal Serbian Government having failed to give a satisfactory reply to the note which was handed to it by the Austro-Hungarian minister in Belgrade on 23 July, 1914, the Imperial and Royal Government is compelled to protect its own rights and interests by a recourse to armed force.

Austria-Hungary, therefore, considers herself from now on to be in state of war with Serbia.

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[1] Presented to the Russian Minister of Foreign Affairs on 6 Aug., 1914, at 6 p. m. (Russian Orange Book, No. 79.)

BRAZIL.

BRAZIL against GERMANY.

Declaration of war against Germany, 26 October, 1917.

[Official United States Bulletin, No. 145, p. 6.]

The Department of State has been informed that, at 6.20 o'clock Friday afternoon, the Brazilian Senate unanimously voted the following resolution which had been approved by the Chamber at 3 o'clock:

A state of war between Brazil and the German Empire, provoked by the latter, is hereby recognized and proclaimed, and the President of the Republic, in accordance with the request contained in his message to the National Congress, is hereby authorized to take such steps for the national defense and public safety as he shall consider adequate, to open the necessary credits and to authorize the credit operations required. All previous measures to the contrary are hereby revoked.

BULGARIA.

BULGARIA against ROUMANIA.

Declaration of war against Roumania, 1 September, 1916.

[Revue Générale de Droit International Public, Documents, 23 : 199.]

M. Radoslavoff, President of the Council of Bulgaria, to the Roumanian Minister at Sofia.

I have had the honor to indicate during the last months to the royal legation of Roumania, either by notes verbales or by letters addressed to your excellency, or in his absence to M. Langa-Rascano, chargé d'affaires, the very numerous incidents which have constantly held on the alert the troops charged with surveillance of the Roumano-Bulgarian frontier.

These incidents, more and more frequent, always provoked from the Roumanian side, in spite of the more than correct attitude of the Bulgarian authorities and in spite of the assurances and protestations of friendship given by the Roumanian legation, have ended by bringing to light intentions which the Bulgarian Government has hesitated to suppose of its neighbor, the recent past not having been sufficient to make them forget the sentiments of lively sympathy of the Bulgarian people toward Roumania. These sentiments date from a distant past, and in the recent past of which I speak your excellency has not forgotten the Balkan war of 1912–13, in which Roumania profited by the bloody trial which the Bulgarian people were enduring to seize from them, when they were struggling for

their existence, a strip of territory, thus manifesting a tenacious ill will which nothing can justify.

The peace of Bucharest followed, which imposed on Bulgaria most heavy sacrifices. Nevertheless she was resigned and wished to offer to her neighbor the hand of friendship. She was disappointed in her hopes. Since then evidences of animosity have continued without intermission. There was first the attitude of the Roumanian press, which overflowed with insults to Bulgaria and her sovereign; the endless difficulties over the transit of merchandise destined to Bulgaria; the refusal to deliver, in spite of regular contracts, products of prime necessity purchased in Roumania—salt, petrol, etc. There are the vexations to which the Bulgarians are exposed who live in Roumania or only cross its territory; the closure of the frontier on 13 July to merchandise and travelers from and to Bulgaria; the protests which the royal legation of Roumania at Sofia made with the greatest energy on the subject of pretended incidents provoked by the Bulgarian frontier guards, incidents which had never taken place, such as that of Rahovo, in reference to which I had the honor to write your excellency on the 15th of August, and M. Rascano on the 21st of the same month.

To the incessant frontier incidents, but of a character more or less mild, succeeded genuine battles, organized by Roumanian detachments against the Bulgarian frontier posts. Post No. 9, to the east of Kemanlar, was attacked on the night of 25–26 August. Posts Nos. 10 and 13 were attacked at the same time. There were indeed veritable operations of war which the Roumanian troops carried on at the frontier: the bombardment of Kaldovo on the 28th of August, and that of Rousse the same day: the 29th of August a Roumanian detachment opened heavy fire on a Bulgarian post situated opposite them, and soon after the fire extended along the frontier line up to Bulgarian Post No. 17.

Similarly, on the shores of the Black Sea the Roumanian frontier guards vigorously attacked the Bulgarian posts and were repulsed. Finally M. Radeff has been forbidden, since 28 August, to communicate with his Government. His passports were sent to him without the Bulgarian Government having been able to give him at any time instructions with reference to an eventual rupture of relations. On the 30th it was your excellency who demanded his passports and notified of the rupture of diplomatic relations as the natural consequence of the event which had preceded.

In the meantime, on the night of the 30th–31st, without an express declaration of war, the Roumanian Army tried to construct a bridge over the Danube before Kaldovo and to cross the river in this place. Your excellency understands what is then the solution desired by the Roumanian Government, and which is compelled by the turn of

events. The situation being given, as that Government has created it, Bulgaria is obliged to accept the *fait accompli*, and I have the honor, M. Minister, to bring to the knowledge of your excellency that from this morning it considers itself in a state of war with Roumania.

Accept the assurance of my highest consideration.

Proclamation of war against Roumania, 1/14 September, 1916.

[Revue Générale de Droit International Public, Documents, 23 : 200.]

Bulgarians! In 1913, after the termination of the Balkan war, when the Bulgarians were obliged to fight against their disloyal allies, our northern neighbor, Roumania, treacherously attacked us under pretense of a breach of the balance of power in the Balkans, and invaded the undefended portions of our fatherland without meeting resistance there. By this predatory invasion of our territory, she not only prevented us from harvesting the holy fruits of the war but also succeeded, as a result of the peace of Bucharest, in humiliating us and depriving us of our dear Dobrudja, the nucleus of our Kingdom. Obeying my orders, our brave army fired not a single shot against the Roumanian soldier, and allowed him to gain a sorry military fame of which he has not dared to boast till now.

Bulgarians! To-day, Bulgaria, with the assistance of the brave troops of our allies, has succeeded in repulsing Serbia's attack on our territory, in defeating Serbia and in destroying her, and in realizing the unity of the Bulgarian people; for to-day, Bulgaria is mistress of almost all the territory over which she has historical and ethnological claims; to-day, this self-same neighbor Roumania has declared war on our ally Austria-Hungary, this time also under the pretense that the European war involves important territorial changes in the Balkans which would menace her future.

Without any declaration of war from Bulgaria, Roumanian troops had already on 28 August bombarded Rustchuk, Swistow, and other Bulgarian Danube towns. Owing to this provocation by Roumania, I command our brave army to chase the enemy from the frontiers of my Kingdom, to destroy this violent neighbor, to secure the unity of the Bulgarian people, which was achieved at the cost of so many sacrifices, and to free our brothers in the Dobrudja from slavery. We will fight hand in hand with the brave and victorious troops of all the powers who are our allies.

I hope the Bulgarian nation will accomplish new glorious deeds of heroism to crown the work of liberation. May the Bulgarian soldiers go on from victory to victory. Forward! May God bless our arms!

BULGARIA against SERBIA.

Notification of existence of war with Serbia, 14 October, 1915.

M. Radoslavoff to American Minister.

[From a despatch to the Department of State.]

Mr. MINISTER: The 29th and 30th of this September (the 12th and 13th October, new style), Serbian troops violating Bulgarian territory, attacked the Royal troops in the regions of Kustendil, of Trn and of Belogradtchik, thus putting them under the obligation of defending the national territory; some engagements took place followed by fierce encounters which are still continuing, and in the course of which about 70 soldiers fell upon the field of battle on the Bulgarian side, and more than 500 were wounded.

Under these conditions and in consideration of the above-mentioned violation and the attack deliberately directed against the Kingdom, I have the honor to inform your excellency, in accordance with Article 2 of the convention relative to the opening of hostilities adopted by the Second Hague Conference, that, from to-day, the 14th October, at 8 o'clock in the morning, Bulgaria finds herself in a state of war with Serbia. During the entire duration of the hostilities which have just commenced, Bulgaria will observe scrupulously, upon the condition of reciprocity, be it well understood, the Red Cross Convention of Geneva as well as the convention concerning laws and customs of land warfare adopted by The Hague Convention of 1899 and 1907.

Please receive, Mr. Minister, the assurance of my high consideration.

(Signed) Dr. V. RADOSLAVOFF.

CHINA.

CHINA against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 10 a. m., 14 August, 1917.

[Official documents relating to the war, Chinese Foreign Office, 1917 : 17.]

PEKING, *14th August, 1917.*

YOUR EXCELLENCY: On 9th February last the Chinese Government addressed a protest to the German Government against the policy of submarine warfare inaugurated by the central European powers, which was considered by the Chinese Government as contrary to the established principles of public international law and imperiling Chinese lives and property.

The Chinese Government, considering its protest to be ineffectual, later notified the German Government, on 14th March last, of the

severance of diplomatic relations with Germany, which fact was duly communicated to your excellency.

As the policy inaugurated by the central European powers—a policy contrary to public international law and violating the principles of humanity—remains unmodified, the Chinese Government, actuated by the desire to maintain international law and protect Chinese lives and property, can not remain indifferent indefinitely.

Inasmuch as Austria-Hungary is acting in this matter in concert with Germany, the Chinese Government is unable to adopt a different attitude toward them, and therefore now declares that a state of war exists between China and Austria-Hungary from 10 o'clock a. m. of the 14th day of the eighth month of the sixth year of the Republic of China. In consequence thereof the treaty of 2d September, 1869, and all other treaties, conventions, and agreements of whatever nature at present in force between China and Austria-Hungary are abrogated, as also all such provisions of the protocol of 7th September, 1901, and other similar international agreements as only concern China and Austria-Hungary. China, however, declares that she will conform to the provisions of The Hague conventions and other international agreements respecting the humane conduct of war.

Besides telegraphing to the Chinese minister at Vienna to inform the Austro-Hungarian Government and to apply for his passport, I have the honor to send you herewith passports for your excellency, the members of the Austro-Hungarian legation, and their families and retinue for protection while leaving Chinese territory. With regard to consular officers of Austria-Hungary in China, this ministry has instructed the different commissioners of foreign affairs to issue them likewise passports for leaving the country.

I avail, etc. (Signed) WANG TA-HSIEH.

To His Excellency Dr. A. VON ROSTHORN,
Envoy Extraordinary and Minister
Plenipotentiary of Austria-Hungary.[1]

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[1] The Austro-Hungarian minister replied as follows:

PEKING, *14th August, 1917.*

YOUR EXCELLENCY: I have the honor to acknowledge the receipt of your note of to-day of the following tenor:

(Here follows text of Chinese note above.)

I can not here enter into the arguments contained in the declaration of war, but feel bound to state that I must consider this declaration as unconstitutional and illegal, seeing that, according to so high an authority as the former President Li Yuan-hung, such a declaration requires the approbation of both Houses of Parliament.

His Excellency, WANG TA-HSIEH, *Minister of Foreign Affairs.*

The Chinese Government returned this communication from the Austro-Hungarian minister without comment. The grounds taken by Foreign Minister Wang Ta-hsieh were that no communications could be received from the Austrian representative since he had ceased to have a diplomatic status.

Presidential proclamation declaring war on Germany and Austria-Hungary, 14 August, 1917.

[Official documents relating to the war, Chinese Foreign Office, 1917 : 13.]

On the 9th day of the 2d month of this year we addressed a protest to the German Government against the policy of submarine warfare inaugurated by Germany, which was considered by this Government as contrary to international law and imperiling neutral lives and property, and declared therein, in case the protest be ineffectual, we would be constrained, much to our regret, to sever diplomatic relations with Germany.

Contrary to our expectations, however, no modification was made in her submarine policy after the lodging of our protest. On the contrary, the number of neutral vessels and belligerent merchantmen destroyed in an indiscriminate manner were daily increasing and the Chinese lives lost were numerous. Under such circumstances, although we might yet remain indifferent and endure suffering, with the meager hope of preserving a temporary peace, yet in so doing we would never be able to satisfy our people, who are attached to righteousness and sensible to disgrace, nor could we justify ourselves before our sister States which had acted without hesitation in obedience to the dictates of the sense of duty. Both here, as well as in the friendly States, the cause of indignation was the same, and among the people of this country there could be found no difference of opinion. This Government thereupon being compelled to consider the protest as being ineffectual, notified, on the 14th of the 3d month, the German Government of the severance of diplomatic relations and at the same time the events taking place from the beginning up to that time were announced for the general information of the public.

What we have desired is peace; what we have respected is international law; what we have to protect are the lives and property of our people. As we originally had no other grave causes of enmity against Germany, if the German Government had manifested repentance for the deplorable consequences resulting from its policy of warfare, it might still be expected to modify that policy in view of the common indignation of the whole world. That was what we eagerly desired and it was the reason why we felt reluctant to treat Germany as a common enemy. Nevertheless, during the five months following the severance of the diplomatic relations the submarine attacks continued in operation as vigorously as before. It is not Germany alone, but Austria-Hungary as well, which adopted and pursued this policy without abatement. Not only has international law been thereby violated, but also our people are suffering injury and loss. The most sincere hope on our part to bring about a better state of affairs is now shattered. Therefore it is hereby declared, against

Germany as well as Austria-Hungary, that a state of war exists commencing from 10 o'clock of the 14th day of the 8th month of the 6th year of the Republic of China. In consequence thereof all treaties, agreements, conventions concluded between China and Germany, and between China and Austria-Hungary, as well as such parts of the international protocols and international agreements as concern the relations between China and Germany, and between China and Austria-Hungary, are in conformity with the law of nations and international practice, abrogated. This Government, however, will respect The Hague Conventions and her international agreement respecting the humane conduct of war.

The chief object of our declaration of war is to put an end to the calamities of war and to hasten the restoration of peace, which, it is hoped, our people will fully appreciate. Seeing, however, that our people have not yet at the present time recovered from sufferings on account of the recent political disturbances and the calamity again befalls us in the breaking out of the present war, I, the President of this Republic, can not help having profound sympathy for our people when I take into consideration their further suffering. I would never resort to this step of striving for the existence of our nation unless and until I, considering it no longer possible to avoid it, am finally forced to this momentous decision.

I can not bear to think that through us the dignity of international law should be impaired, or the position in the family of nations should be undermined or the restoration of the world's peace and happiness should be retarded. It is therefore hoped that all of our people will exert their utmost in these hours of hardship, with a view to maintaining and strengthening the existence of the Chinese Republic, so that we may establish ourselves amidst the family of nations and share with them the happiness and benefits derived therefrom.

(Countersigned) Gen. TUAN CHI-JUI,
Prime Minister and Minister of War, etc.

(Here follow the signatures of the other cabinet ministers.)

CHINA against GERMANY.

Declaration of war against Germany transmitted through the Netherlands minister to Peking, 10 a. m., 14 August, 1917.

[Official documents relating to the war, Chinese Foreign Office, 1917 : 16.]

PEKING, *14th August, 1917.*

YOUR EXCELLENCY: On 9th February last, the Chinese Government addressed a protest to the German Government against the policy of submarine warfare inaugurated by the Central European Powers,

which was considered by the Chinese Government as contrary to the established principles of public international law and imperiling Chinese lives and property. The Chinese Government declared that in case its protest be ineffectual China would be constrained, much to her regret, to sever diplomatic relations with Germany.

Contrary to expectations the submarines of the Central European Powers continued to sink neutral and belligerent merchantmen whereby more Chinese were lost, and the Chinese Government could not but consider its protest to be ineffectual and notified Germany on 14th March last of the severance of diplomatic relations.

The Chinese Government still expected that the general condemnation of that policy—a policy contrary to public international law and violating the principles of humanity—would lead to its modification, but it now finds that its expectations are no longer realizable.

The Chinese Government, actuated by the desire to maintain international law and protect Chinese lives and property, can not remain indifferent to this state of affairs indefinitely, and therefore now declares that a state of war exists between China and Germany from 10 o'clock a. m. of the 14th day of the 8th month of the 6th year of the Republic of China. In consequence hereof the treaty of 2d September, 1861, the supplementary convention of 31st March, 1880, and all other treaties, conventions, and agreements of whatever nature at present in force between China and Germany are abrogated, as also all such provisions of the protocol of 7th September, 1901, and other similar international agreements as only concern China and Germany. China, however, declares that she will conform to the provisions of The Hague Conventions and other international agreements respecting the humane conduct of war.

Besides telegraphically requesting the Danish Government to inform the German Government, I have the honor to request your excellency to transmit this note to the German Government.

(Signed) WANG TA-HSIEH.

I avail, etc.

His Excellency JONKEER BEERLAERTS VAN BLOKLAND,
Envoy Extraordinary and Minister
Plenipotentiary of The Netherlands.

Presidential proclamation declaring war on Germany and Austria-Hungary, 14 August, 1917.

[See p. 18.]

COSTA RICA.

COSTA RICA against GERMANY.

Declaration of war against Germany.

[Archives of the Department of State.]

Legislative Branch.

No. 2.

The Constitutional Congress of the Republic of Costa Rica,

In the exercise of the powers conferred upon it by the Constitution of the Republic, Section 5, Article 76, and in view of the information furnished to this High Body by the Chief of the Nation,

Resolves:

ARTICLE 1. To authorize the Executive to declare war against the Government of the German Empire.

TO THE EXECUTIVE.

Given in the Hall of Sessions, National Palace, San José, the twenty-third day of the month of May, nineteen eighteen.

DANIEL NUNEZ,
President.
RICARDO COTO FERNANDEZ,
Secretary.
F. A. SEGREDA,
Secretary.

PRESIDENTIAL MANSION,
San José, May 23rd, 1918.

Let it be published.

F. TINOCO.

ENRIQUE ORTIZ, R.,
The Minister of State in the Department of Foreign Relations.

Executive Branch.

No. 4.

FEDERICO TINOCO,
Constitutional President of the Republic of Costa Rica,

Taking into account—

1. That the war provoked by Germany against the principal powers with the intention of subverting throughout the world the system of justice in order to implant that of force as the supreme law of nations

is virtually a conflict of principles the result of which interests most deeply all the members of the international community;

2. And that, in fact, the objects pursued by Germany in the present war compromise the existence of the most elevated ideals of humanity and annul the most important mental and moral gains of civilization, since those intentions, already evidenced in the course of the conflict, constitute the conscious violation of the international laws and customs that regulate the life of States and their immediate substitution by an exclusive and tyrannical dictatorship, which, based upon military power and the exercise of autocracy, tends to the establishment of political and economical servitude over the nations already subjected by her or which she may in the future overcome by armed force;

3. And that Germany in its attempts against the fundamentals of international law, through a long series of acts, characterized by the spirit of absolutism has trampled under foot the most respectable human institutions and doctrines and particularly that high conception of liberty and justice which is the essence of world morality; that it has violated the sacredness of public treaties, the laws of war and the rights of neutrals, and has threatened with death the principle of the existence of small nationalities and the indisputable right they possess to dispose of their own destiny in the exercise of their rights and their autonomy;

4. And that in view of these premises, even though Costa Rica, on account of the smallness of her material resources, can not under the present circumstances render to the great cause of humanity aid in proportion to her high aspirations, it is obvious that both because of the necessity for self-preservation and because of her proven sentiments of solidarity, she is under the unavoidable moral obligation to cooperate with her unrestricted support in the work of common defense in which, with the greatest heroism, many nations find themselves engaged, to many of which the people of Costa Rica finds itself united by the ties of old and sincere friendship;

5. And that the rupture of diplomatic relations with the Imperial German Government, as decreed by the Executive on 21 September last, is not sufficient in itself to define the position that Costa Rica should resolutely assume in the presence of the conflict, which for a small and weak country such as ours, having no other protection or other cult but that of the law, can not be other than that of a belligerent participation against the oppressors of the liberty, existence, respect for, and autonomous government of all the nations of the earth;

Now, therefore,

In exercise of the authority which has been conferred upon him by the Constitutional Congress in the resolution of to-day and of the power conferred by Paragraph 3, Article 99, of the Constitution,

and in conformity with the aforesaid, and in Council of Ministers, decrees:

ARTICLE 1. That from and after this date a state of war exists between the Republic of Costa Rica and the Government of the German Empire.

Given in the presidential mansion, San José, the twenty-third day of the month of May, nineteen eighteen.

F. TINOCO.
ENRIQUE ORTIZ, R.,
The Minister of Finance and Commerce and in charge of Office of Foreign Affairs, etc.
J. J. TINOCO,
The Minister of War and for the Ministers of Government and Promotion.
ANASTASIO ALFARO,
The Minister of Public Instruction.

CUBA.

CUBA against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 16 December, 1917.

[Archives of the Department of State.]

[No. 170.] LEGATION OF CUBA,
WASHINGTON, D. C., *21 December, 1917.*

MR. SECRETARY: I have the honor to inform your excellency that the Congress of my nation, in joint session of this 16th day of the present month, declared, and the President of the Republic proclaimed, a state of war between the Republic of Cuba and the Imperial and Royal Government of Austria-Hungary.

I avail myself of this opportunity to reiterate to your excellency the assurances of my highest and most distinguished consideration.

By direction of the Minister.

Dr. J. R. TORRALBA,
First Secretary in Charge of the Affair.

CUBA against GERMANY.

Declaration of war against Germany, 7 April, 1917.

[Gaceta Oficial, Edicion extraordinaria, No. 20, p. 3.]

Mario G. Menocal, President of the Republic of Cuba.

Whereas the Congress has voted and I have sanctioned the following joint resolution:

ARTICLE 1. *Resolved*, That from to-day a state of war is formally declared between the Republic of Cuba and the Imperial Government of Germany, and the President of the Republic is authorized and directed by this resolution to employ all the forces of the nation and the resources of our Government to make war against the Imperial German Government, with the object of maintaining our rights, guarding our territory, and providing for our security,

prevent any acts which may be attempted against us, and defend the navigation of the seas, the liberty of commerce, and the rights of neutrals and international justice.

ART. 2. The President of the Republic is hereby authorized to use all the land and naval forces in the form he may deem necessary, using existing forces, reorganizing them, or creating new ones, and to dispose of the economic forces of the nation in any way he may deem necessary.

ART. 3. The President will give account to Congress of the measures adopted in fulfillment of this law, which will be in operation from the moment of its publication in the official gazette.

Therefore I command that the present law be complied with and executed in all its parts.

Given at the palace of the President in Habana, the seventh April, nineteen hundred and seventeen.

M. G. MENOCAL.

PABLO DESVERNINE,
Secretary of State.

FRANCE.

FRANCE against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 12 p. m., 12 August, 1914.

[Austro-Hungarian Red Book, LXV.]

Count Mensdorff to Count Berchtold.

[Telegram.]

LONDON, *12 August, 1914.*

I have just received from Sir Edward Grey the following communication:

By request of the French Government, which no longer is able to communicate directly with your Government, I wish to inform you of the following:

After having declared war on Serbia and having thus initiated hostilities in Europe, the Austro-Hungarian Government has, without any provocation on the part of the Government of the French Republic, entered into a state of war with France:

1. After Germany had declared war successively upon Russia and France, the Austro-Hungarian Government has intervened in this conflict by declaring war on Russia, which was already in alliance with France.

2. According to manifold and reliable information, Austria has sent troops to the German border under circumstances which constitute a direct menace to France.

In view of these facts, the French Government considers itself compelled to declare to the Austro-Hungarian Government that it will take all measures necessary to meet the actions and menaces of the latter.

Sir Edward Grey added:

A rupture with France having been brought about, the Government of His Britannic Majesty is obliged to proclaim a state of war between Great Britain and Austria-Hungary, to begin at [illegible]

Notification of declaration of war against Austria-Hungary, 13 August, 1914.

[Journal Officiel, 14 August, 1914, p. 1418.]

The following notification was, under date of yesterday, sent to his excellency the Ambassador of the United States at Paris, in charge of Austro-Hungarian interests in France, as well as to the diplomatic representatives of powers accredited at Paris.

"After having been, in spite of pacific affirmations, the original coauthor of the aggression of Germany against France, the Imperial and Royal Government of Austria-Hungary, by acts of military assistance given to Germany, and incompatible with neutrality, provoked, on the date of 10 August, 1914, the rupture of diplomatic relations between the cabinets of Paris and Vienna.

"New information having established that the Imperial and Royal Government persists in the assistance above denounced, the Government of the Republic sees itself constrained to no longer recognize it as neutral and to consider it as an enemy from the date of 12 August, at midnight.

"The present notification is made in conformity with Article 2, of Convention III of The Hague of 18 October, 1907, relative to the opening of hostilities and is sent to (diplomatic representative at Paris of the power to which notification is made) at Paris, 13 August, 1914, at 4 o'clock in the afternoon."

FRANCE against BULGARIA.

Declaration of war against Bulgaria, 6 a. m., 16 October, 1915.

[Journal Officiel, 18 October, 1915, p. 7481.]

Bulgaria having taken action with our enemies and against one of the allies of France, the Government of the Republic announces that a state of war exists between France and Bulgaria, from 16 October at 6 o'clock in the morning, through the action of Bulgaria.

FRANCE against GERMANY.

Notification of war with Germany, 4 August, 1914.

[French Yellow Book, No. 157; Journal Officiel, 6 August, 1914, p. 7133.]

Notification of the French Government to the Representatives of the Powers at Paris.

The German Imperial Government, after having allowed its armed forces to cross the frontier, and to permit various acts of murder and pillage on French territory; after having violated the neutrality of the Grand Duchy of Luxemburg in defiance of the stipulations of the Convention of London, 11th of May, 1867, and of Convention V of The Hague, 18 October, 1907, on the rights and duties of pow-

ers and persons in case of war on land (Arts. 1 and 2), conventions which have been signed by the German Government; after having addressed an ultimatum to the Royal Government of Belgium with the object of requiring passage for German troops through Belgian territory in violation of the treaties of 19 April, 1839, which had been signed by them, and in violation of the above Convention of The Hague,

Have declared war on France at 6.45 p. m. on 3 August, 1914.

In these circumstances the Government of the Republic find themselves obliged on their side to have recourse to arms.

They have in consequence the honor of informing by these presents the Government of * * * that a state of war exists between France and Germany dating from 6.45 p. m. on 3 August, 1914.

The Government of the Republic protest before all civilized nations, and especially those Governments which have signed the conventions and treaties referred to above, against the violation by the German Empire of their international engagements, and they reserve full right for reprisals which they might find themselves brought to exercise against an enemy so little regardful of its plighted word.

The Government of the Republic, who propose to observe the principles of the law of nations, will, during the hostilities, and assuming that reciprocity will be observed, act in accordance with the international conventions signed by France concerning the law of war on land and sea.

The present notification, made in accordance with Article 2 of the Third Convention of The Hague of 18 October, 1907, relating to the opening of hostilities and handed to * * *:

PARIS, *4 August, 1914—2 p. m.*[1]

FRANCE against TURKEY.

Decision of the French prize court in regard to a state of war with Turkey as from 29 October, 1914.

[The Mahrousseh, Journal Officiel, 17 December, 1915; Décisions du Conseil des Prises, 1: 94.]

"The state of war existed *en fait* between France and Turkey since 29 October, 1914, at 3 o'clock in the morning, the time of the bombardment by the Turks of the port of Odessa, where there was a French vessel which was bombarded and on board of which two French nationals were killed."

[1] In the Belgian Gray Book, the date is given as 5 August.

Declaration recognizing a state of war with Turkey, 5 November, 1914.[1]

[Revue Générale de Droit International Public, Documents,. 22 : 6.]

The acts of hostility which the Turkish fleet, commanded by German officers, has committed against a French merchant vessel and which have caused the death of two Frenchmen and serious damage to the vessel, not having been followed by the dismissal of the German military and naval missions, a measure by which the Porte might still have relieved itself of responsibility, the Government of the Republic is obliged to state that by the act of the Ottoman Government the state of war exists between France and Turkey.

GERMANY.

GERMANY against BELGIUM.

Ultimatum to Belgium, 2 August, 1914.

[Belgian Gray Book, No. 20.]

Note presented on 2 August, at 7 p. m., by Herr von Below Saleske, German Minister at Brussels, to Monsieur Davignon, Belgian Minister for Foreign Affairs.

IMPERIAL GERMAN LEGATION IN BELGIUM,
BRUSSELS, *2 August, 1914.*

(Very confidential.)

Reliable information has been received by the German Government to the effect that French forces intend to march on the line of the Meuse by Givet and Namur. This information leaves no doubt as to the intention of France to march through Belgian territory against Germany.

The German Government can not but fear that Belgium, in spite of the utmost good will, will be unable, without assistance, to repel so considerable a French invasion with sufficient prospect of success to afford an adequate guarantee against danger to Germany. It is essential for the self-defense of Germany that she should anticipate any such hostile attack. The German Government would, however, feel the deepest regret if Belgium regarded as an act of hostility against herself the fact that the measures of Germany's opponents force Germany, for her own protection, to enter Belgian territory.

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[1] Exequaturs were withdrawn from Turkish consuls on 6 November (Journ. Off., Nov. 7, 1914) :

The President of the French Republic, on the report of the minister of foreign affairs—*Decrees:*

ARTICLE 1. By reason of the state of war between France and Turkey, the exequaturs accorded to the Ottoman consul general, consuls and consular agents in France and in the colonies and protectorates are withdrawn.

ART. 2. The minister of foreign affairs is charged with the execution of the present decree.

Done at Bordeaux, the 6th November, 1914.

R. POINCARÉ.

By the President of the Republic.

DELCASSÉ,
The Minister of Foreign Affairs.

In order to exclude any possibility of misunderstanding the German Government make the following declaration:

1. Germany has in view no act of hostility against Belgium. In the event of Belgium being prepared in the coming war to maintain an attitude of friendly neutrality toward Germany the German Government bind themselves, at the conclusion of peace, to guarantee the possessions and independence of the Belgian Kingdom in full.

2. Germany undertakes, under the above-mentioned conditions, to evacuate Belgian territory on the conclusion of peace.

3. If Belgium adopts a friendly attitude, Germany is prepared, in cooperation with the Belgian authorities, to purchase all necessaries for her troops against a cash payment, and to pay an indemnity for any damage that may have been caused by German troops.

4. Should Belgium oppose the German troops, and in particular should she throw difficulties in the way of their march by a resistance of the fortresses on the Meuse, or by destroying railways, roads, tunnels, or other similar works, Germany will, to her regret, be compelled to consider Belgium as an enemy.

In this event Germany can undertake no obligations toward Belgium, but the eventual adjustment of the relations between the two States must be left to the decision of arms.

The German Government, however, entertain the distinct hope that this eventuality will not occur, and that the Belgian Government will know how to take the necessary measures to prevent the occurrence of incidents such as those mentioned. In this case the friendly ties which bind the two neighboring States will grow stronger and more enduring.

Declaration concerning use of force in Belgium, 4 August, 1914.

[Belgian Gray Book, No. 27.]

Herr von Below Saleske, German Minister, to Monsieur Davignon, Belgian Minister for Foreign Affairs.

(The original is in French.)

BRUSSELS, *4 August, 1914 (6 a. m.).*

SIR: In accordance with my instructions I have the honor to inform your excellency that in consequence of the refusal of the Belgian Government to entertain the well-intentioned proposals made to them by the German Government the latter, to their deep regret, find themselves compelled to take—if necessary by force of arms—those measures of defense already foreshadowed as indispensable in view of the menace of France.

VON BELOW.

GERMANY against FRANCE.

Ultimatum to France, 31 July, 1914.

[German White Book, Annex 25.]

Telegram of the Imperial German Chancellor to the Imperial German Ambassador in Paris.

31 July, 1914.

Important!

In spite of our still pending mediatory action, and although we ourselves have adopted no steps toward mobilization, Russia has mobilized her entire army and navy, which means mobilization against us also. Thereupon we declared the existence of a threatening danger of war, which must be followed by mobilization, unless Russia within 12 hours ceases all warlike steps against us and Austria. Mobilization inevitably means war. Kindly ask the French Government whether it will remain neutral in a Russian-German war. Answer must come within 18 hours. Wire at once hour that inquiry is made. Act with the greatest possible dispatch.

Declaration of war against France, 6.45 p. m., 3 August, 1914.

[French Yellow Book, No. 147.]

Letter handed by the German Ambassador to M. René Viviani, President of the Council, Minister for Foreign Affairs, during his farewell audience, 3 August, 1914, at 6.45 p. m.

M. LE PRÉSIDENT: The German administrative and military authorities have established a certain number of flagrantly hostile acts committed on German territory by French military aviators. Several of these have openly violated the neutrality of Belgium by flying over the territory of that country; one has attempted to destroy buildings near Wesel; others have been seen in the district of the Eifel; one has thrown bombs on the railway near Carlsruhe and Nuremberg.

I am instructed, and I have the honor to inform your excellency, that in the presence of these acts of aggression the German Empire considers itself in a state of war with France in consequence of the acts of this latter power.

At the same time I have the honor to bring to the knowledge of your excellency that the German authorities will detain French mercantile vessels in German ports, but they will release them if within 48 hours they are assured of complete reciprocity.

My diplomatic mission having thus come to an end, it only remains for me to request your excellency to be good enough to furnish me with my passports and to take the steps you consider suitable to

assure my return to Germany with the staff of the embassy, as well as with the staff of the Bavarian legation and of the German consulate general in Paris.

Be good enough, M. le Président, to receive the assurances of my deepest respect.

SCHOEN.

GERMANY against PORTUGAL.

Declaration of war against Portugal, 6 p. m., 9 March, 1916.

[Revue Générale de Droit International Public, Documents, 23 : 171.]

Since the outbreak of the war the Portuguese Government, by actions which are in conflict with her neutrality, has supported the enemies of the German Empire. The British troops have been allowed four times to march through Mozambique. The coaling of German ships was forbidden. The extensive sojourn of British war vessels in Portuguese ports, which is also in conflict with the laws of neutrality, was allowed; Great Britain was also permitted to use Madeira as a *point d'appui* for her fleet. Guns and materials of war were sold to Entente Powers, and even a destroyer was sold to Great Britain.

German cables were interrupted, the archives of the imperial vice consul in Mossamedes were seized, and expeditions sent to Africa were described as directed against Germany. At the frontier of German Southwest Africa and Angola the German district commander and two officers and men were tricked into visiting Naulila, and on 19 October, 1915, were declared to be under arrest. When they tried to escape arrest, they were shot at and forcibly taken prisoners.

During the course of the war the Portuguese press and Parliament have been more or less openly encouraged by the Portuguese Government to indulge in gross insults to the German people. We repeatedly protested against these incidents in every individual case, and made most serious representations. We held the Portuguese Government responsible for all consequences, but no remedy was afforded us.

The Imperial Government, in forbearing appreciation of Portugal's difficult position, has hitherto avoided taking more serious steps in connection with the attitude of the Portuguese Government. On 23 February the German vessels in Portuguese ports were seized and occupied by the military. On our protest, the Portuguese Government declined to go back from these forcible measures, and tried to justify them by illegal (*gesetzwidrig*) interpretations of existing treaties. These interpretations appeared to the German Government to be empty evasions. It is a fact that the Portuguese Govern-

ment seized a number of German vessels out of proportion to what was necessary for meeting the shortage of Portugal's tonnage, and that the Government did not attempt even once to come to an understanding with the German shipowners either directly or through the mediation of the German Government. The whole procedure of the Portuguese Government, therefore, represents a serious violation of existing laws and treaties.

The Portuguese Government by this procedure openly showed that it regards itself as the vassal of Great Britain, which subordinates all other considerations to British interests and wishes. Furthermore, the Portuguese Government effected the seizure of the vessels in a manner in which the intention to provoke Germany can not fail to be seen; the German flag was hauled down in the German vessels, and the Portuguese flag with a war pennon was hoisted, and the flagship of the admiral fired a salute.

The Imperial Government sees itself obliged to draw the necessary conclusions from the attitude of the Portuguese Government. It regards itself from now on in a state of war with the Portuguese Government.

GERMANY against ROUMANIA.

Statement of declaration of war against Roumania, 28 August, 1916.

[Revue Générale de Droit International Public, Documents, 23:199; London Times, 29 Aug., 1916, p. 7, e.]

After Roumania, as already reported, disgracefully broke treaties concluded with Austria-Hungary and Germany, she declared war Sunday against our ally. The Imperial German minister to Roumania has received instructions to request his passports and to declare to the Roumanian Government that Germany now likewise considers herself at war with Roumania.

GERMANY against RUSSIA.

Ultimatum to Russia, 31 July, 1914.

[German White Book, Annex 24.]

Telegram of the Imperial German Chancellor to the Imperial German Ambassador in St. Petersburg.

31 July, 1914.

Important!

In spite of still pending mediatory negotiations, and although we ourselves have up to the present moment taken no measures for mobilization, Russia has mobilized her entire army and navy; in other words, mobilized against us also. By these Russian meas-

ures we have been obliged, for the safeguarding of the Empire, to announce that danger of war threatens us, which does not yet mean mobilization. Mobilization, however, must follow unless Russia ceases within twelve hours all warlike measures against us and Austria-Hungary and gives us definite assurance thereof. Kindly communicate this at once to M. Sazonof and wire hour of its communication to him.

Declaration of war against Russia, 7.10 p. m., 1 August, 1914.[1]

[German White Book, Annex 26. See also Russian Orange Paper, No. 76.]

Telegram of the Imperial German Chancellor to the Imperial German Ambassador in St. Petersburg.

1 August, 1914, 12.52 p. m.

Important!

In case the Russian Government gives no satisfactory answer to our demand, will your excellency, at 5 o'clock this afternoon (central European time), kindly hand to it the following declaration:

The Imperial Government has endeavored from the beginning of the crisis to bring it to a peaceful solution. In accordance with a wish expressed to him by His Majesty the Emperor of Russia, His Majesty the Emperor of Germany, in cooperation with England, applied himself to the accomplishment of a mediating rôle toward the cabinets of Vienna and St. Petersburg, when Russia, without awaiting the outcome, proceeded to mobilize her entire land and naval forces.

Following this threatening measure, occasioned by no military preparation on the part of Germany, the German Empire found itself confronted by a serious and imminent peril. If the Imperial Government had failed to meet this peril, it would have jeopardized the safety and even the existence of Germany. Consequently, the German Government was obliged to address the Government of the Emperor of all the Russias and insist upon the cessation of all these military measures. Russia having refused to accede to this demand, and having manifested by this refusal that her acts were directed against Germany, I have the honor, by order of my Government, to make known to your excellency the following:

His Majesty the Emperor, my august Sovereign, in the name of the Empire, takes up the defiance, and considers himself in a state of war against Russia.

I urgently ask that you wire the hour of arrival of these instructions, and of their carrying out, according to Russian time.

Kindly ask for your passports and hand over protection and business to the American embassy.

[1] Note handed in by the ambassador of Germany at St. Petersburg on 19 July (1 Aug.), 1914, at 10 minutes past 7 in the evening. (Russian Orange Paper, No. 76.)

GREAT BRITAIN.

GREAT BRITAIN against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 12 p. m., 12 August, 1914.

[Austro-Hungarian Red Book, LXV.]

Count Mensdorff to Count Berchtold.

[Telegram.]

LONDON, *12 August, 1914.*

I have just received from Sir Edward Grey the following communication:

By request of the French Government, which no longer is able to communicate directly with your Government, I wish to inform you of the following:

After having declared war on Serbia and having thus initiated hostilities in Europe, the Austro-Hungarian Government has, without any provocation on the part of the Government of the French Republic, entered into a state of war with France.

1. After Germany had declared war successively upon Russia and France, the Austro-Hungarian Government has intervened in this conflict by declaring war on Russia, which was already in alliance with France.

2. According to manifold and reliable information Austria has sent troops to the German border under circumstances which constitute a direct menace to France.

In view of these facts the French Government considers itself compelled to declare to the Austro-Hungarian Government that it will take all measures necessary to meet the actions and menaces of the latter.

Sir Edward Grey added:

A rupture with France having been brought about, the Government of His Britannic Majesty is obliged to proclaim a state of war between Great Britain and Austria-Hungary, to begin at midnight.

GREAT BRITAIN against BULGARIA.

Proclamation of war against Bulgaria, 10 p. m., 15 October, 1915.

[London Gazette, 16 Oct., 1915, pp. 10229, 10257.]

The King of the Bulgarians, an ally of the Central Powers, being now in a state of war with the King of Serbia, an ally of His Majesty King George V, His Majesty's Government have notified the Swedish minister in London, who is in charge of Bulgarian interests in this country, that a state of war exists between Great Britain and Bulgaria as from 10 p. m. to-night.

FOREIGN OFFICE, *15 October, 1915.*

GREAT BRITAIN against GERMANY.

Ultimatum to Germany, 4 August, 1914.

[British White Paper, No. 159.]

Sir Edward Grey to Sir E. Goschen.

[Telegraphic.]

FOREIGN OFFICE,
LONDON, *4 August, 1914.*

We hear that Germany has addressed note to Belgian minister for foreign affairs stating that the German Government will be compelled to carry out, if necessary by force of arms, the measures considered indispensable.

We are also informed that Belgian territory has been violated at Gemmerich.

In these circumstances, and in view of the fact that Germany declined to give the same assurance respecting Belgium as France gave last week in reply to our request made simultaneously at Berlin and Paris, we must repeat that request, and ask that a satisfactory reply to it and to my telegram of this morning[1] be received here by 12 o'clock to-night. If not, you are instructed to ask for your passports, and to say that His Majesty's Government feel bound to take all steps in their power to uphold the neutrality of Belgium and the observance of a treaty to which Germany is as much a party as ourselves.

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[1] **No. 153.—Sir Edward Grey to Sir E. Goschen.**

[Telegraphic.]

FOREIGN OFFICE, LONDON, *4 August, 1914.*

The King of the Belgians has made an appeal to His Majesty the King for diplomatic intervention on behalf of Belgium in the following terms:

"Remembering the numerous proofs of Your Majesty's friendship and that of your predecessor, and the friendly attitude of England in 1870, and the proof of friendship you have just given us again, I make a supreme appeal to the diplomatic intervention of Your Majesty's Government to safeguard the integrity of Belgium."

His Majesty's Government are also informed that the German Government has delivered to the Belgian Government a note proposing friendly neutrality entailing free passage through Belgian territory, and promising to maintain the independence and integrity of the Kingdom and its possessions at the conclusion of peace, threatening in case of refusal to treat Belgium as an enemy. An answer was requested within 12 hours.

We also understand that Belgium has categorically refused this as a flagrant violation of the law of nations.

His Majesty's Government are bound to protest against this violation of a treaty to which Germany is a party in common with themselves, and must request an assurance that the demand made upon Belgium will not be proceeded with, and that her neutrality will be respected by Germany. You should ask for an immediate reply.

Proclamation of war against Germany, 11 p. m., 4 August, 1914.[1]

[London Times, 5 Aug., 1918, p. 6, a.]

The following statement was issued from the Foreign Office at 12.15 this morning (5 Aug.):

Owing to the summary rejection by the German Government of the request made by His Majesty's Government for assurances that the neutrality of Belgium will be respected, His Majesty's ambassador at Berlin has received his passports and His Majesty's Government have declared to the German Government that a state of war exists between Great Britain and Germany as from 11 p. m. on 4 August.

GREAT BRITAIN against TURKEY.

Proclamation of state of war with Turkey, 5 November, 1914.

[London Gazette, 5 Nov., 1914, pp. 8997, 9011; Manual of Emergency Legislation, Supp. No. 2, p. 1.]

Owing to hostile acts committed by Turkish forces under German officers, a state of war exists between Great Britain and Turkey as from to-day.

FOREIGN OFFICE, *5 November, 1914.*

GREECE.

GREECE against BULGARIA.

Declaration of war of Provisional Government against Germany and Bulgaria, 23 November, 1916.

[International Law Documents, Naval War College, 1917: 159.]

There is no country in existence which, in its desire for peace, has done more than Greece in the course of the present war to repress its feelings, even to the extent of forgetting its aspirations, or shown so much patience toward rivals who have sought to benefit by the ruin of its interests. The spectacle of Belgium, a little country like Greece, being made the victim of a most insolent violation of solemn treaties, and the fact that that violation was the basis of the war, inclined Greece from the very first to take part in this war of nations. But in the interest of Serbia and in that of the Greek cause generally, Greece deemed it a duty to decide in favor of neutrality. Profiting by past experience of Bulgarian duplicity, however, and having from an early period reasons to suspect that treacherous designs were being entertained, Greece at the same time kept her forces absolutely in reserve in case her efforts should not succeed in preventing a Bul-

[1] A notification of similar effect was published in the London Gazette, 7 Aug., 1914, pp. 6161, 6181, and in the Manual of Emergency Legislation, page 1.

garian aggression, with a view to going to the assistance of her heroic Serbian ally.

When this eventuality actually occurred, Greece, which at that time was still controlled by her legal Government, was ready loyally to fulfill the obligations of the alliance. But she was deterred by the pernicious effects of a disgraceful campaign which had long been undertaken against the moral unity of the country. As early as February, 1915, the Liberal Cabinet then in power, strong in the almost unanimous support of the representatives of the people, decided in principle to secure at once by means of war the fullest aspirations of Hellenism, and to cooperate with the protecting powers in the Dardanelles expedition. The agents of German propaganda succeeded in preventing this by bringing about between the Crown and the responsible Government a sudden conflict, which, according to the constitutional laws confirmed by parliamentary traditions, appeared to be out of the question. Surprised by this unforeseen crisis, the Greek people deferred manifesting their opinion until the general election of 31 May, 1915, when they again expressed their confidence in the Liberal Party, which was ready, the moment Bulgarian aggression manifested itself, to lead the country in the path of honor and glory.

But the pro-German party, emboldened by their success in February and fortified by the encouragement they had received, were on the alert. In spite of the recent appeal to the country, it was able to provoke between the Crown and the responsible Government a far more serious conflict than the preceding one. Again the people were patient. If they could no longer count on their parliamentary institutions, they thought that their rulers, who were unconscious dupes of German perfidy, would be compelled sooner or later by the logic of events to recognize their mistake and to attempt to safeguard the already compromised interests of the country.

Alas! this hope was vain. For a whole year they were condemned to drink deeper and deeper of the cup of national humiliation. By means of a measure of demobilization their army was reduced to inactivity. Heroic Serbia was invaded by our hereditary enemy, Bulgaria, whose forces were stationed in a menacing way on our frontier, and soon afterwards, in spite of the promises given, they seized a portion of our territory, which the criminal policy of the Greek Government basely delivered over to them, together with some of our forts and war material and an entire army.

Meanwhile another enemy of our race, Germany, has been carrying on, by means of a swarm of official and secret agents, the work of degradation by means of which she reckoned on depriving the country of its fleet and preparing it for the loss of its political liberties and national independence. Happily, before succumbing to the repeated

efforts of its enemies from without and within, the Greek people took courage and, in a supreme demonstration of the national conscience, resolved not to allow themselves to become enslaved.

Being unable to break the shackles of force and corruption, which precluded all national initiative within the limits of the established institutions, the more determined of the patriots fled and joined the populations which, far from the center, preserve more liberty of opinion and action. These patriots undertook to utilize the living forces of Hellenism in order to form an army destined to liberate the occupied parts of the national territory and, while rehabilitating the compromised national honor, to show that Hellenism was still alive to its duties and its destinies. The civilized world has given a sympathetic welcome to this revolt of the Greek soul.

The Government established at Saloniki, recognized as a power *de facto*, set resolutely about its task, and, with the material and moral aid of the protecting powers, Greece began the realization of her military plan. At a moment when the first units of her army which have been sent to the front are about to enter into a contest with the enemies of Hellenism, the Provisional Government thinks it right to bring to the knowledge of the belligerent States, of which it has become the ally, and of the neutral States, whose sympathy it desires, the fact that from this day it considers itself in a state of war with Bulgaria for having attacked Serbia, Greece's ally, and invaded, in spite of her promises, the national territory; and with Germany for having incited and aided Bulgaria to fight against Serbia, and to act against Greece; for having violated the guarantees she gave to the Greek Government with regard to the towns of Seres, Drama, and Kavalla; for having extended to Greek maritime commerce in Greek territorial waters, without plausible reason or previous warning, the criminal attempts of submarines, and for having cynically declared that she intended to persevere in these acts of destruction of defenseless vessels and the cowardly murder of innocent passengers; and for having, finally, undertaken to demoralize, humiliate, and divide the Greek people to the detriment of their honor and their national interests.

Not being able to send a direct notification of the present declaration of war to the Governments of the Kingdom of Bulgaria and the German Empire, the Provisional Government asks the allied Governments to be good enough to communicate it to them in its name by any means at their disposal.

Notification of declaration of state of war of the Government of Alexander with Bulgaria, 2 July, 1917.

[Telegram to the Department of State from Athens.]

372. *2 July, 12 noon.*

SECRETARY OF STATE,
Washington, D. C.

Minister of Foreign Affairs informs me Greece at war Germany, Bulgaria. Relations broken off other Central Powers.

DROPPERS.

GREECE against GERMANY.

[See the note of the Provisional Government declaring war against Germany and Bulgaria, 23 November, 1916, and the notification of a state of war of the Government of Alexander with Germany and Bulgaria, 2 July, 1917, cited above.]

GUATEMALA.

GUATEMALA against GERMANY.

Decree declaring war against Germany, 20 April, 1918.

[Archives of the Department of State.]

Decree No. 976.

The National Legislative Assembly of the Republic of Guatemala.

Considering:

That on 27 April last Guatemala broke its diplomatic relations with the Imperial German Government for the reasons set forth in Decree No. 727 of the executive power and approved by Decree No. 966 of the legislative power;

That relations being once broken, and having been considered in detail, those deeds and circumstances which have followed as a consequence of that preliminary step, the time has arrived for establishing the international attitude of Guatemala in the conflict of nations;

That, on the other hand, the continental solidarity, the geographical position of the country, and the ties, historical and of international order, existing between the United States and Guatemala indicate to the latter its line of conduct in the present case:

Therefore, decrees:

ARTICLE 1. In the present international conflict Guatemala assumes the same belligerent attitude as the United States toward the German Empire.

ART. 2. For the purposes of the fifteenth clause of the fifty-fourth article of the constitutive law of the Republic, by virtue of which the foregoing declaration is made, the Executive is authorized to proceed in conformity with the needs of the situation in complying with the present decree.

It now passes to the Executive for publication and fulfillment.

Done in the chamber of the sessions of the National Legislative Assembly in Guatemala on the twentieth day of April of the year one thousand nine hundred and eighteen.

(s.) ARTURO URICO, *President.*

(s.) MANUEL MA. GIRÓN,
Secretary.

(s.) MAXIMO SOTO HALL,
Secretary.

PALACE OF THE EXECUTIVE POWER, *23 April, 1918.*

Let it be published and enacted.

(s.) MANUEL ESTRADA C.

(s.) LUIS TOLEDO HERRARTE,
The Secretary of State for the Department of Foreign Affairs.

HAITI.

HAITI against GERMANY.

Notification of declaration of war against Germany, 12 July, 1918.

[Telegram received by the Department of State, 12 July, 1918.]

The Council of State, acting upon message of the President, has just unanimously authorized him to declare Haiti in a state of war with Germany.

HONDURAS.

HONDURAS against GERMANY.

Notification of declaration of war against Germany, 19 July, 1918.

[Telegram received by the Department of State.]

19 July, 6 p. m.

SECRETARY OF STATE,
Washington, D. C.

Honduras declared war against Germany to-day.

CURTIS.

ITALY.

ITALY against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 23 May, 1915.

[2nd Austro-Hungarian Red Book, No. 204.]

Baron Burián to Baron Macchio.

[Telegram.]

VIENNA, *23 May, 1915.*

The Duke of Avarna this afternoon handed to me the following declaration of war:

In compliance with the orders of his noble sovereign the King, the undersigned Royal Italian ambassador has the honor to communicate the following to his excellency the Austro-Hungarian minister of foreign affairs:

On the 4th of this month the Austro-Hungarian Government was informed of the grave reasons for which Italy, confident of being in the right, declared that her alliance with Austria-Hungary was null and void, and without effect in future, since this alliance has been violated by the Austro-Hungarian Government, and that Italy resumed her full freedom of action. Fully determined to protect Italian rights and interests with all the means at its disposal, the Italian Government can not evade its duty to take such measures as events may impose upon it against all present and future menaces to the fulfillment of Italy's national aspirations. His Majesty the King declares that from to-morrow he will consider himself in a state of war with Austria-Hungary.

The undersigned has the honor at the same time to inform his excellency the minister of foreign affairs that to-day the Austro-Hungarian ambassador in Rome will receive his passports, and he would be grateful if his excellency would hand him likewise his own passports.

Notification of war with Austria-Hungary, 23 May, 1915.

[Italian Green Book, No. 77, Annex 2; Journal Officiel, 27 May, 1915, p. 3335.]

Note of Baron Sonnino, Italian Foreign Minister.

[Communicated to Italian representatives abroad and to foreign Governments on 23 May, 1915.]

ROME, *23 May, 1915.*

A clear proof of the eminently conservative and defensive character of the Triple Alliance is to be found in the letter and spirit of the treaty, and in the policy clearly manifested and confirmed by the official acts of the ministers who created the alliance and who were responsible for its renewals.

Italian policy has ever been inspired with the ideals of peace. Austria-Hungary, in provoking a European war, in refusing to accept Serbia's reply which gave Austria-Hungary all the satisfaction which she could legitimately demand, in refusing to listen to the conciliatory proposals which Italy had made in conjunction with other powers in order to preserve Europe from an immense conflict, which would drench it in blood and pile up ruins on a scale hitherto unknown and undreamed of—Austria-Hungary tore up with her own hands the treaty of alliance with Italy, which, so long as it was loyally interpreted other than as an instrument of aggression against others, had been a valuable factor in eliminat-

ing and settling disputes, and in securing for many years to come the inestimable benefits of peace.

The first article of the treaty reaffirmed the logical and general principle of every treaty of alliance, namely, the obligation to exchange views on political and economic questions of a general nature which might arise. It followed that neither contracting party was at liberty to undertake, without previous mutual agreement, action by which the other contracting parties might incur any obligation under the treaty of alliance, and in any way affect their most important interests. Austria-Hungary, by sending her note of 23 July, 1914, to Serbia without previously consulting Italy failed in this duty; Austria-Hungary thus violated unquestionably one of the fundamental clauses of the treaty. Austria-Hungary was all the more under the obligation to consult Italy first, inasmuch as her uncompromising action against Serbia had created a situation directly tending to provoke a European war, and as early as the beginning of July, 1914, the Royal Government, who were anxious in regard to the way things were shaping at Vienna, had repeatedly counseled moderation and had warned the Imperial and Royal Government of the possible danger of a general European crisis.

The action taken by Austria-Hungary against Serbia was, moreover, directly in opposition to Italian general political and economic interests in the Balkan Peninsula. It is not possible that Austria could have thought that Italy would remain indifferent to any diminution of Serbian independence. Our warnings had not been lacking on this point. For many years Italy had from time to time warned Austria, in friendly but unequivocal terms, that she considered the independence of Serbia an essential factor in the balance of power in the Balkans, which Italy herself could never allow to be disturbed to her detriment. And this spirit was not only expressed in the private conversations of her diplomats, but her statesmen proclaimed it loudly and publicly in her Parliament.

When, in delivering an ultimatum to Serbia, Austria not only failed—in defiance of all custom—to consult us beforehand, but used every effort to conceal it from us, so that we only heard of it simultaneously with the public through the telegraphic agencies before we were informed diplomatically, she not only placed herself outside the alliance with Italy but showed herself an enemy of Italian interests.

It became clear to the Royal Government, from trustworthy information in their possession, that the whole trend of Austro-Hungarian action in the Balkans would lead to a very serious impairment of the political and economic position of Italy, because it aimed directly or indirectly at the subjugation of Serbia, the political and territorial isolation of Montenegro, and the isolation of Roumania and the

diminution of her political importance. This impairment of Italy's position in the Balkans would have been brought about even if Austria-Hungary had had no idea of territorial aggrandizement. It is sufficient to remark that the Austro-Hungarian Government were under an express obligation to take Italy into consultation by virtue of a special article of the treaty of the Triple Alliance, which established the bond of a defensive agreement and the right to compensation among the allies in the case of the temporary or permanent occupation of any part of the Balkans. The Royal Government began conversations on the subject with the Imperial and Royal Government immediately at the beginning of hostile action by Austria-Hungary against Serbia, receiving, after some reluctance, an adhesion in principle.

Those conversations were begun immediately after 23 July, with a view to giving to the treaty, which had been violated and therefore annulled by the action of Austria-Hungary, a new element of life, which could only be effected by the conclusion of new agreements.

Conversations were reopened on a rather more definite basis in the month of December, 1914. The royal ambassador at Vienna then received instructions to inform Count Berchtold that the Italian Government considered it necessary to proceed without any delay to an exchange of ideas, with a view to negotiating with the Government on concrete points in order to clear up the whole situation arising out of the conflict provoked by Austria-Hungary. Count Berchtold refused at first, on the ground that he did not think it was necessary, in the present circumstances, to enter into negotiations. But in consequence of our reply, with which the German Government associated themselves, Count Berchtold subsequently informed us that he was ready to enter into the exchange of ideas which we had proposed.

We accordingly immediately set out the fundamental broad lines of our point of view, that is to say, we declared that the compensation that we had in mind as affording the basis of a possible agreement must envisage territories now under the domination of Austria-Hungary.

The discussions continued from month to month from the beginning of December until March, and it was not until the end of March that Baron Burián made us an offer of a zone of territory extending slightly to the north of the town of Trent. In return for this cession Austria-Hungary demanded from us in her turn numerous reciprocal engagements, including full and complete freedom of action in the Balkans.

It should be noted that the Austro-Hungarian Government did not contemplate that the cession of territory in the Trentino should be effected immediately, as we had demanded, but only at the end of the

present war. We replied that we could not possibly accept the offer, and we formulated the minimum concessions that would be in any way consistent both with our national aspirations and with the improvement of our strategical position on the Adriatic. Such requirements included a somewhat larger district of the Trentino, a new district on the Isonzo, the special treatment of Trieste, the cession of some islands of the Curzolari Archipelago, a declaration of Austria's disinterestedness in Albania, and the recognition of our possession of Valona and the Dodekanese.

All our requests met at first with a categorical refusal. It was only after another month of conversations that Austria-Hungary was induced to increase the zone of territory to be ceded in the Trentino, setting the limit at Mezzolombardo, but excluding Italian districts, as, for instance, the whole side of the Valley of Noce, the Val di Fassa, and the Val di Ampizzo, and leaving us a boundary which did not correspond in any way to strategical requirements. Moreover, the Austrian Government firmly adhered to their refusal to make any cession effective before the end of the war. The repeated refusals of Austria-Hungary were explicitly confirmed in a conversation between Baron Burián and the royal ambassador at Vienna on 29 April last, the upshot of which was that the Austro-Hungarian Government, while admitting the possibility of recognizing to a certain extent our preponderant interest at Valona and the aforesaid cession of territory in the Trentino, persisted in giving a negative reply to almost all our other demands, and especially to those regarding the line of the Isonzo, Trieste, and the islands.

From the attitude adopted by Austria-Hungary from the beginning of December to the end of April it became quite clear that she was merely trying to temporize without achieving any definite results. In these circumstances Italy found herself face to face with the danger that all her aspirations, whether traditional or ethnical, and her desire for security on the Adriatic, would be lost forever, while on the other hand the European war menaced her highest interests in other seas.

Owing to this fact it became at once a duty and a necessity for Italy to recover the liberty of action which was her right, and to seek to preserve her interests by other means than those employed in the negotiations fruitlessly pursued for five months, and by other means than through the treaty of alliance, which by the action of Austria-Hungary had virtually been at an end since July, 1914.

It will not be inappropriate to observe that once the alliance had come to an end there was no longer any reason for the Italian people to maintain the attitude of acquiescence which had been dictated by their sincere desire for peace nor to repress any longer—as

they had so long forced themselves to do—the indignation caused by the treatment to which the Italian population in Austria was subjected. It is true the treaty contained no formal provision for safeguarding the Italian language, traditions, or civilization in the regions inhabited by our compatriots in Austria-Hungary. But since it was sought to give to the alliance an appearance of sincere peace and harmony, it is obvious that there was a moral obligation on the part of our ally to pay strict regard to and scrupulously to respect the vital interests involved for us in the racial distribution on the Adriatic coast.

As a matter of fact, the constant policy of the Austro-Hungarian Government aimed for many years at the destruction of Italian nationality and civilization along the coast of the Adriatic. It will only be necessary to give a few short instances of facts and tendencies already too well known to everyone: systematic substitution for officials of Italian nationality of officials of other nationalities; the importation of hundreds of families of different nationality; the creation at Trieste of cooperative societies of foreign workmen; the Hohenlohe decrees which aimed at excluding all Italian officials from the public life of Trieste; the denationalization of the judicial administration; the question of the university, which formed the subject of diplomatic negotiations; the denationalization of the steamship companies; the action of the police and political trials tending to favor other nationalities at the expense of the Italians; the systematic expulsion of Italians, wholly unjustified and constantly increasing in number.

The unchanging policy of the Imperial and Royal Government toward the subject Italian population was not solely inspired by internal motives due to the existence of contending nationalities within the Austro-Hungarian monarchy, but appears, on the contrary, to have been caused in great part by a deep-rooted sentiment of hostility and aversion for Italy, which prevails in certain circles which are in close touch with the Austro-Hungarian Government, and which have a dominating influence on its decisions. From among many proofs of this which could be cited, it may suffice to mention that in 1911, while Italy was engaged in war with Turkey the general staff at Vienna made preparations that grew more and more obvious for an attack upon us, and the military party made most active attempts to win over to its views the other factors responsible for the action of the monarchy.

At the same time the armed preparations on our frontier assumed an openly offensive character. The crisis came to a pacific solution, as far as can be judged, owing to the influence of external factors. But from that time onward we have remained under the impression that we might unexpectedly find ourselves exposed

to armed menace whenever the party hostile to us might obtain predominance in Vienna. All this was known to Italy, but (as has been said before) a sincere desire for peace prevailed among the Italian people.

When new conditions came into existence Italy tried to see whether, even under such circumstances, it might be possible to find a more solid basis and a more durable guarantee for her treaty with Austria-Hungary. But her endeavors, conducted over a period of many months in constant accord with Germany, who agreed that negotiation was legitimate, were spent in vain. Hence Italy has found herself forced by the course of events to seek other solutions, and since the treaty of alliance with Austria-Hungary had already virtually ceased to exist, and now only served to cloak the real situation—one of continual suspicions and daily differences—the royal ambassador at Vienna was instructed to declare to the Austro-Hungarian Government that the Italian Government considered itself freed from any binding power of the treaty of Triple Alliance as far as Austria-Hungary was concerned. This communication was made at Vienna on 4 May.

After this declaration on our part, and after we had been forced to proceed to the legitimate protection of our own interests, the Imperial and Royal Government made new offers of inadequate concessions, which in no sense corresponded to the minimum demands of our former proposals. These offers could in no wise be accepted by us. The Royal Government, considering all that has been set forth above, strengthened by the votes of Parliament and by the solemn manifestations of the nation, has resolved to make an end of delays, and on this day has declared to the Austro-Hungarian ambassador at Rome, in the name of the King, that Italy considers herself in a state of war with Austria-Hungary from to-morrow, 24 May. Instructions in the same sense were telegraphed yesterday to the royal ambassador at Vienna.

SONNINO.

ITALY against BULGARIA.

Notification of a state of war with Bulgaria, 19 October, 1915.

[Archives of the Department of State.]

No. 3551. ROYAL EMBASSY OF ITALY,
WASHINGTON, *19 October, 1915.*

Mr. SECRETARY OF STATE: With reference to my note of the 8th instant and in obedience to instructions received from H. E. the Minister of Foreign Affairs, I have the honor to inform your excellency that Bulgaria having opened hostilities against Serbia, allying herself with the enemies of Italy and combating the allies, the Italian Government, by order of His Majesty the King, my august sovereign,

has declared a state of war to exist from this day between Italy and Bulgaria.

Be pleased to accept, Mr. Secretary of State, the expression of my highest consideration.

MACCHI DI CELLERE.

ITALY against GERMANY.

Notification of a state of war with Germany, 28 August, 1916.

The Italian Ambassador to the Secretary of State of the United States.

[Archives of the Department of State.]

ROYAL ITALIAN EMBASSY,
BEVERLY FARMS, *28 August, 1916.*

MR. SECRETARY OF STATE: I have the honor to address the following communication to your excellency in the name of the King's Government:

Systematically hostile acts on the part of the German Government to the detriment of Italy have succeeded one another with increasing frequency, consisting in both an actual warlike participation and economic measures of every kind.

With regard to the former, it will suffice to mention the reiterated supplies of arms and of instruments of war, terrestrial and maritime, furnished by Germany to Austria-Hungary, and the uninterrupted participation of German officers, soldiers, and seamen in the various operations of war directed against Italy. In fact, it is only thanks to the assistance afforded her by Germany in the most varied forms that Austria-Hungary has recently been able to concentrate her most extensive effort against Italy. It is also worth while to recall the transmission, by the German Government to Austria-Hungary, of the Italian prisoners who had escaped from the Austro-Hungarian concentration camps and taken refuge in German territory.

Among the measures of an economic character which were hostile to Italy it will be sufficient to cite the invitation which, at the instance of the imperial department of foreign affairs, was directed to German credit institutions and bankers to consider every Italian citizen as a hostile foreigner and to suspend payments due him; also the suspension of payment to Italian laborers of the pensions due them by virtue of the formal provisions of the German law.

The Government of His Majesty the King did not think that it could longer tolerate such a state of things, which aggravates, to the exclusive detriment of Italy, the sharp contrast between the de facto and the de jure situation already arising from the fact of the alliance of Italy and of Germany with two groups of nations at war among one another.

For these reasons the Royal Government has in the name of His Majesty the King, notified the German Government through the Swiss Government that, as from to-day, 28 August, Italy considers herself in a state of war with Germany.

Please accept, etc.

MACCHI DI CELLERE.

ITALY against TURKEY.

Notification of the declaration of war against Turkey, noon, 21 August, 1915.[1]

The Italian Ambassador to the Secretary of State of the United States.

[Archives of the Department of State.]

No. 2651. ITALIAN EMBASSY,
BEVERLY FARMS, MASS., *21 August, 1915.*

Mr. SECRETARY OF STATE: I have the honor, by order of my Government, to bring the following to your excellency's knowledge.

From the date of the signature of the treaty of peace of Lausanne, on 18 October, 1912, the Ottoman Government has been violating that treaty, and the violations have not ceased for an instant until now.

As a matter of fact the Imperial Government never adopted in earnest any measure to bring about the immediate cessation of hostilities in Libya, as it was bound to do under its covenants solemnly entered into; and it did nothing toward the release of the Italian prisoners of war. The Ottoman soldiers remaining in Tripoli and Cyrenaica were kept there under command of their own officers, continuing to use the Ottoman flag, holding possession of their rifles and cannons. Enver Bey continued to direct in person the hostilities against the Italian Army until the end of November, 1912, and Aziz Bey did not leave those parts with 800 men of the regular forces until June, 1913. The way in which both these commanders were received on their return to Turkey is proof evident that their acts were fully assented to by the imperial authorities. After Aziz Bey's departure, on the other hand, officers of the Turkish Army continued to find their way into Cyrenaica. On this very day there are more than a hundred there whose names are known to the Italian Government. In April last 35 young men from Benghazi, whom Enver Bey had taken to Constantinople against the will of the Royal Government and who were there admitted into the military academy, were sent back to Cyrenaica without our knowledge. Again the King's Government positively knows, any declaration to the contrary notwithstanding, that the holy war was also proclaimed against the

[1] The Royal Italian ambassador at Paris made known on the 29th Aug., 1915, that the Royal Italian Government declared war on Turkey on the date of 20 Aug., 1915, at 12 o'clock noon. (Journal Officiel, 31 Aug., 1915, p. 6107.)

Italians in Africa in 1914; and a mission of Turkish officers and soldiers bearing gifts to the Senussi chiefs in rebellion against the Italian authorities in Libya were recently captured by French warships.

The relations of peace and friendship which the Italian Government thought it could establish with the Ottoman Government after the treaty of Lausanne therefore never existed, through the latter's fault. And after every diplomatic representation against violations of the treaty had proved utterly useless there remained nothing for the Royal Government to do but to provide otherwise for the safeguard of the high interests of the State and the defense of its colonies against the persistent menace and the actual acts of hostility on the part of the Ottoman Government.

It became all the more necessary and urgent to reach a decision, as the Ottoman Government quite recently committed patent invasions of the rights, interests, and very freedom of Italian citizens in the Empire, the more energetic protests entered on this point by the King's ambassador at Constantinople being of no avail. In the presence of the tergiversations of the Ottoman Government on the specific point of letting Italian citizens freely depart from Asia Minor, these protests had, in these last few days, to assume the form of an ultimatum. On the 3d of the month the royal ambassador at Constantinople addressed by order of the Royal Government a note to the Grand Vizier setting forth the following four demands:

1. That the Italians be free to leave Beirut.

2. That the Italians in Smyrna, the port of Vourla being unavailable, be allowed to leave by way of Sigadjik.

3. That the Ottoman Government let Italians embark unmolested from Mersina, Alexandretta, Caiffa, and Jaffa.

4. That the local authorities in the interior stop opposing the departure of royal subjects proceeding to the coast, and, on the contrary, endeavor to facilitate their journey.

On the 5th of August, before the expiration of the term of 48 hours set in the Royal Government's ultimatum, the Ottoman Government, in a note signed by the Grand Vizier, accepted every point in the Italian demands. On the strength of such solemn declarations the King's Government arranged to send two ships to Rhodes with instructions to await orders to proceed and take on board the Italian citizens, who for some time had been staying in the above-named ports of Asia Minor, until they could return home. But now it appears from reports of the American consular officers whom the United States Government has graciously authorized to assume the protection of Italian interests at various posts that the Turkish military authority at Beirut canceled on the 9th instant the permit to leave granted but a short time before. It was likewise canceled at

Mersina. It was further announced that the Ottoman military authorities had opposed the embarkation of other Italians residing in Syria.

In the presence of this patent breach of categorical promises made by the Ottoman Government in consequence of the Italian Government's ultimatum the Royal Government has issued instructions to His Majesty's ambassador at Constantinople to deliver a declaration of war on Turkey. And the declaration of war was delivered this day at Constantinople to the Ottoman Government by the King's ambassador.

Accept, etc.,

V. MACCHI DI CELLERE.

JAPAN.

JAPAN against GERMANY.

Ultimatum to Germany, 15 August, 1914.

[Official Japanese Documents, No. 3: Austro-Hungarian Red Book No. 66.]

Telegram dispatched by the Imperial Japanese Government to the chargé d'affaires ad interim at Berlin on 15 August, 1914.

You are hereby instructed to address to Herr von Jagow immediately on receipt of this telegram a signed note to the following effect:

The undersigned, chargé d'affaires ad interim of His Majesty the Emperor of Japan, has the honor in pursuance of instructions from his Government, to communicate to his excellency the minister for foreign affairs of His Majesty, the German Emperor to the following effect:

Considering it highly important and necessary in the present situation to take measures to remove all causes of disturbance to the peace of the Far East and to safeguard the general interests contemplated by the agreement of alliance between Japan and Great Britain in order to secure a firm and enduring peace in eastern Asia, which is the aim of the said agreement, the Imperial Japanese Government sincerely believe it their duty to give advice to the Imperial German Government to carry out the following two propositions:

First. To withdraw immediately from the Japanese and Chinese waters German men-of-war and armed vessels of all kinds and to disarm at once those which can not be so withdrawn;

Second. To deliver on a date not later than 15 September, 1914, to the Imperial Japanese authorities without condition or compensation the entire leased territory of Kiaochou with a view to eventual restoration of the same to China.

The Imperial Japanese Government announce at the same time that in the event of their not receiving by noon, 23 August, 1914, the answer of the Imperial German Government signifying unconditional acceptance of the above advice offered by the Imperial Japanese Government they will be compelled to take such action as they may deem necessary to meet the situation.

The undersigned, etc.

Proclamation of war with Germany, noon, 23 August, 1914.

[Official Japanese documents, No. 1.]

The imperial rescript issued at Tokio, 23 August, 1914, 6 p. m.

We, by the grace of Heaven, Emperor of Japan, seated on the throne occupied by the same dynasty from time immemorial, do hereby make the following proclamation to all our loyal and brave subjects:

We hereby declare war against Germany, and we command our army and navy to carry on hostilities against that Empire with all their strength, and we also command all our competent authorities to make every effort, in pursuance of their respective duties to attain the national aim by all means within the limits of the law of nations.

Since the outbreak of the present war in Europe, calamitous effect of which we view with grave concern, we on our part have entertained hopes of preserving the peace of the Far East by the maintenance of strict neutrality, but the action of Germany has at length compelled Great Britain, our ally, to open hostilities against that country, and Germany is at Kiaochou, its leased territory in China, busy with warlike preparations, while its armed vessels cruising seas of eastern Asia are threatening our commerce and that of our ally. The peace of the Far East is thus in jeopardy.

Accordingly, our Government and that of His Britannic Majesty, after full and frank communication with each other, agreed to take such measures as may be necessary for the protection of the general interests, contemplated in the agreement of alliance, and we on our part being desirous to attain that object by peaceful means commended our Government to offer with sincerity an advice to the Imperial German Government. By the last day appointed for the purpose, however, our Government failed to receive an answer accepting their advice. It is with profound regret that we, in spite of our ardent devotion to the cause of peace, are thus compelled to declare war, especially at this early period of our reign and while we are still in mourning for our lamented mother.

It is our earnest wish that by the loyalty and valor of our faithful subjects peace may soon be restored and the glory of the Empire be enhanced.

LIBERIA.

LIBERIA against GERMANY.

Joint resolution declaring the existence of a state of war with Germany, 4 August, 1917.

[Acts passed by the Legislature of the Republic of Liberia, 1917 : 11.]

Whereas on the 8th day of May, 1917, the Government of the Republic of Liberia found it necessary in the interest of the Republic

to sever official relations with the Government of the German Empire for reasons set forth in the despatch of the Secretary of State to the Representative of the Imperial German Government at Monrovia and in the manifesto of the President of the Republic to the people of Liberia dated June 1, 1917; and

Whereas the essential interests of Liberia demand that this Republic should align itself with those powers who, in the world conflict now going on, are upholding principles of humanity, of public right, and international conduct, upon which the security of international society is founded; Therefore,

It is resolved by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled—

SECTION 1. That the action of the President in severing official relations with the Government of the German Empire and all steps in relation thereto already taken by the Executive Department of this Government be and the same are hereby unanimously approved.

SEC. 2. That the President be and he is hereby authorized to deport from the Republic all and every German subject resident within the borders thereof and to sequester and liquidate all German commercial property within the Republic and to denounce all commercial and political understandings heretofore had with the Government of the German Empire.

SEC. 3. That the Legislature of Liberia recognizing the duty of this Republic to humanity, to civilization, and to assist in the maintenance of the principles of public right, and appreciating the necessity for such a resolution in the interest of the Republic, do hereby authorize and approve of the alignment of the Republic with those States who are maintaining the conflict against the German Empire, and in pursuance of said resolution do declare that a state of war exists between the Republic of Liberia and the Government of the German Empire.

SEC. 4. That the President of the Republic be and he is hereby authorized and fully empowered to take all and every precaution to insure, and to make every and any necessary provision to maintain, the security of the State and its essential interests which the present international condition in his discretion justifies.

Any law to the contrary notwithstanding.

Approved August 4th, 1917.

MONTENEGRO.

MONTENEGRO against AUSTRIA-HUNGARY.

Notice of declaration of war against Austria-Hungary, 7 August, 1914.

[London Times, 10 August, 1914, p. 6, d.]

VIENNA, *7 August, 1914.*

It is semiofficially announced that the Government of Montenegro has informed the Austro-Hungarian minister in Cettinje that they consider themselves in a state of war with Austria.

The minister has left Cettinje. (Reuter.)

NICARAGUA.

NICARAGUA against GERMANY AND AUSTRIA-HUNGARY.

Decree declaring a state of war with Germany and Austria-Hungary, 6 May, 1918.

[Archives of the Department of State.]

The Senate and Chamber of Deputies decree:

1. From this date there exists and is declared a state of war between Nicaragua and the Imperial Governments of Germany and Austria-Hungary.

2. Nicaragua declares itself united with the United States of America and with all the other Latin American Republics which are now at war with the above-mentioned Imperial Governments.

3. Therefore martial law is declared in the Republic and the Executive Power is empowered to take all measures which he may judge proper and necessary for the efficacious cooperation of Nicaragua in carrying out this decree.

Done in the hall of sessions of the Chamber of Deputies, Managua, 6 May, 1918.

SALVADOR CHAMORRO, *D. P.*
GABRY RIVAS, *D. S.*
FERNANDO IG. MARTINEZ, *D. S.*

To the Executive Power.

SENATE CHAMBER, *8 May, 1918.*

PEDRO GONZALES, *S. P.*
SEBASTIAN URIZA, *S. S.*
F. M. J. MORALES, *S. S.*

Therefore, let it be executed.

PRESIDENT'S HOUSE,
8 May, 1918.

EMILIANO CHAMORRO.
J. A. URTECHO,
The Minister for Foreign Affairs.

PANAMA.

PANAMA against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 10 December, 1917.

[Archives of the Department of State.]

The National Assembly of Panama: In view of the message of the President in which he advises the National Assembly of the declaration of war made by the Congress of the United States of America on the Austro-Hungarian Empire and considering that the Republic of Panama has expressed before in its laws and resolutions its firm willingness to lend to the United States of America all the powers and cooperation it may be capable of in the present war, making common cause with the democratic nations which are fighting to impede the predominance of the world by the Teuton powers,

Resolves, That the Republic of Panama be declared in a state of war from to-day, 10 December, 1917, with the Austro-Hungarian Empire.

The President is invested with the necessary powers to cooperate with the United States of America in the prosecution of the war in accordance with the principles of international law, giving compliance in the best possible manner to that which is prescribed by Article VIII of the National Constitution.

PANAMA against GERMANY.

Proclamation of cooperation with the United States in war against Germany, 7 April, 1917.

[Archives of the Department of State.]

PROCLAMATION.

The Congress of the United States of America has declared that a state of war exists between that country and the German Empire, and such declaration imposes upon the Republic of Panama grave and unavoidable obligations.

If any other country of the world were affected, the elemental duty of Panama would be to maintain itself within the limits of a strict neutrality; but it being a conflict in which is involved the United States of America, a Nation which by the virtue of a perpetual public treaty guarantees and maintains the independence and sovereignty of Panama, and has constructed within Panamanian territory a wonderful work necessary for the commerce of the world and whose conservation is essential for the development and the progress of our country, neutrality is impossible.

Our clear and indisputable duty in this dreadful hour of human history is that of a natural ally whose interests, and whose very existence are linked in a perpetual and indissoluble manner with the United States of America, and this is the meritorious attitude which it is incumbent upon us to adopt. And as such a situation creates danger for our country, it is the duty of the Panamanian people to cooperate with all the energies and resources at its disposal for the protection and defense of the Panama Canal and to safeguard the territory of the nation.

This attitude of the Panamanian people was foreseen and faithfully interpreted by the National Assembly in a resolution unanimously approved on the 24th of February last, and confirmed afterwards in the introductory clauses and in the text of Law 46 of 1917, and the moment has arrived for the Executive Power to act in accordance with the declaration of the Supreme Body of the Republic.

Therefore, I, Ramon M. Valdes, President of the Republic of Panama, declare that the Panamanian nation will lend its emphatic cooperation to the United States of America against the enemies who may execute or attempt to execute hostile acts against the territory of Panama or against the Panama Canal, or which in any manner may affect or tend to affect the common interests of the two countries.

The Government will adopt the measures adequate to these ends as circumstances may demand them, and considers that it is a patriotic duty for all Panamanian citizens to facilitate the military operations which the forces of the United States may need to undertake within the territorial limits of our country designed for the defense of the common rights and interests of the two nations.

It is the duty of foreigners, resident or transient, to submit their conduct to this declaration under the penalties established by the laws of the country and by the rules of international law.

(Signed) RAMON M. VALDES.

PANAMA, *7 April, 1917.*

PORTUGAL.

PORTUGAL against GERMANY.

Law authorizing military intervention, 24 November, 1914.[1]

[Colecção Official de Legislacão Portuguesa, 1914, 2 : 591.]

(Resolution passed 23 November, 1914, according to message received by U. S. Department of State.)

PRESIDENT OF THE MINISTRY.—LAW No. 283.

In the name of the nation the Congress of the Republic decrees and has promulgated the following law:

[1] According to the Official U. S. Bulletin of 7 November, 1918, p. 3, military aid was granted by Portugal on 19 May, 1915.

SINGLE ARTICLE. The executive power is authorized to intervene by military measures in the present international conflict at the time and in the manner it should judge necessary for our high interests and duties as a free nation and ally of England and for the same end to take any extraordinary steps which the circumstances of the moment may demand.

Let the ministers of all departments have it printed, published, and circulated.

Given at the seat of the government of the Republic and published 24 November, 1914.

MANUEL DE ARRIAGA.
BERNARDINO MACHADO.
EDUARDO AUGUSTA DE SOUSA MONTEIRO.
ANTONIO DOS SANTOS LUCAS.
ANTONIO JULIO DA COSTA PEREIRA DE EÇA.
AUGUSTO EDUARDO NEUPARTH.
A. FREIRE DE ANDRADE.
JOÃO MARIA DE ALMEIDA LIMA.
ALFREDO AUGUSTA LISBOA DE LIMA.
JOSÉ DE MATOS SOBRAL CID.

ROUMANIA.

ROUMANIA against AUSTRIA-HUNGARY AND HER ALLIES.

Declaration of war against Austria-Hungary, 9 p. m., 27 August, 1916.[1]

[The Times (London) History of the War, 9 : 430 ; Revue Générale de Droit International Public, Documents, 23 : 197.]

Note handed to the Austro-Hungarian Minister at Bucharest, 27 August, 1916.

The Alliance concluded between Germany, Austria-Hungary, and Italy had, according to the precise statements of the Governments themselves, only an essentially conservative and defensive character. Its principal object was to guarantee the allied countries against any attack from outside and to consolidate the state of things created by previous treaties. It was with the desire to harmonize her policy with these pacific tendencies that Roumania joined that alliance. Devoted to the work of her internal constitution and faithful to her firm resolution to remain in the region of the lower Danube an element of order and equilibrium, Roumania has not ceased to contribute to the maintenance of peace in the Balkans. The last Balkan wars, by destroying the status quo, imposed upon her a new line of conduct.

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[1] AMSTERDAM, *28 August, 1918.*

A Vienna telegram states that last night the Roumanian minister in Vienna visited the Austro-Hungarian Ministry of Foreign Affairs in order to present a note according to which Roumania, as from 27 August, at 9 o'clock in the evening, considered herself in a state of war with Austria-Hungary. (London Times, 29 Aug., 1916, p. 7, c. See also Journal Officiel, 5 Sept., 1916, p. 7959.)

Her intervention gave peace and reestablished the equilibrium. For herself she was satisfied with a rectification of the frontier which gave her greater security against aggression, and which, at the same time repaired the injustice committed to her detriment at the Congress of Berlin. But in the pursuit of this aim Roumania was disappointed to observe that she did not meet from the cabinet of Vienna the attitude that she was entitled to expect.

When the present war broke out Roumania, like Italy, declined to associate herself with the declaration of war by Austria-Hungary, of which she had not been notified by the cabinet of Vienna. In the spring of 1915 Italy declared war against Austria-Hungary. The Triple Alliance no longer existed. The reasons which determined the adherence of Roumania to this political system disappeared. At the same time, in place of a grouping of States seeking by common efforts to work in agreement in order to assure peace and the conservation of the situation de facto and de jure created by treaties, Roumania found herself in presence of powers making war on each other for the sole purpose of transforming from top to bottom the old arrangements which had served as a basis for their treaty of alliance.

These profound changes were for Roumania an evident proof that the object that she had pursued in joining the Triple Alliance could no longer be attained, and that she must direct her views and her efforts toward new paths, the more so as the work undertaken by Austria-Hungary assumed a character threatening the essential interests of Roumania, as well as her most legitimate national aspirations.

In the presence of so radical a modification of the situation between the Austro-Hungarian monarchy and Roumania the latter resumed her liberty of action.

The neutrality which the Royal Government imposed upon itself in consequence of a declaration of war made independent of its will and contrary to its interests was adopted, in the first instance, as a result of assurances given at the outset by the Imperial and Royal Government that the monarchy, in declaring war upon Serbia, was not inspired by a spirit of conquest, and that it had absolutely no territorial acquisitions in view. These assurances were not realized. To-day we are confronted by a situation de facto from which may arise great territorial transformations and political changes of a nature to constitute a grave menace to the security and future of Roumania.

The work of peace which Roumania, faithful to the spirit of the Triple Alliance, had attempted to accomplish was thus rendered barren by those who themselves were called upon to support and defend it.

In adhering, in 1883, to the group of central powers, Roumania, far from forgetting the ties of blood uniting the people of her kingdom to those Roumanians who are subject to the Austro-Hungarian mon-

archy, saw in the relations of friendship and alliance which were established between the three great powers a precious pledge for her domestic tranquility as well as for the improvement of the lot of the Roumanians of Austria-Hungary. In effect, Germany and Italy, who had reconstituted their States on the basis of the principle of nationality, could not but recognize the legitimacy of the foundation on which their own existence reposed.

As for Austria-Hungary, she found in friendly relations established between her and the Kingdom of Roumania assurances for her tranquility both in her interior and on our common frontiers, for she was bound to know to what an extent the discontent of her Roumanian population found an echo among us, threatening every moment to trouble the good relations between the two States.

The hope that we based from this point of view upon our adhesion to the triple alliance remained unfulfilled during more than 30 years. The Roumanians of the monarchy not only never saw any reform introduced of a nature to give them even the semblance of satisfaction, but, on the contrary, they were treated as an inferior race, and condemned to suffer the oppression of a foreign element which constitutes only a minority in the midst of the diverse nationalities constituting the Austro-Hungarian State. All the injustices which our brothers were thus made to suffer maintained between our country and the monarchy a continual state of animosity, which the Government of the kingdom only succeeded in appeasing at the cost of great difficulties and numerous sacrifices.

When the present war broke out it might have been hoped that the Austro-Hungarian Government, at least at the last moment, would end by convincing itself of the urgent necessity of putting an end to this injustice, which endangered not only our relations of friendship, but even the normal relations which ought to exist between neighboring States. Two years of war, during which Roumania has preserved her neutrality, proved that Austria-Hungary, hostile to all domestic reform that might ameliorate the life of the peoples she governs, showed herself as prompt to sacrifice them as she was powerless to defend them against external attacks. The war, in which almost the whole of Europe is taking part, raises the gravest problems affecting the national development and the very existence of States. Roumania, from a desire to contribute in hastening the end of the conflict and governed by the necessity of safeguarding her racial interests, finds herself forced to enter into line by the side of those who are able to assure her the realization of her national unity. For these reasons she considers herself from this moment in a state of war with Austria-Hungary.

RUSSIA.

RUSSIA against BULGARIA.

Proclamation of war against Bulgaria, 19 October, 1915.

[International Law Documents, Naval War College, 1917 : 209.]

We hereby make known to all our loyal subjects that the treason of Bulgaria to the Slav cause, prepared with perfidy since the beginning of the war, has now, although it seemed impossible, become an accomplished fact. Bulgarian troops have attacked our loyal ally, Serbia, already bleeding in the struggle against a stronger enemy.

Russia and the great powers, our allies, tried to dissuade the Government of Ferdinand of Coburg from taking this fatal step. The realization of the ancient aspirations of the Bulgar people regarding the annexation of Macedonia was assured to Bulgaria by other means, in conformity with Slav interests, but underhand methods, prompted by the Germans, and fratricidal hatred of the Serbians triumphed.

Bulgaria, our coreligionist, liberated but a short time ago from the Turkish yoke by the fraternal love of the Russian people, openly took sides with the enemies of the Christian faith, Slavism, and Russia.

The Russian people regard with sorrow the treason of Bulgaria, which was so near to it until these last few days, and, with bleeding heart, it draws its sword against her, leaving the fate of the betrayer of the Slav cause to the just punishment of God.

RUSSIA against TURKEY.

Note on the occasion of war with Turkey, 3 November, 1914.

[Revue Générale de Droit International Public, Documents, 22 : 6.]

Germany and Austria, in their futile struggle against Russia, have sought to incite Turkey against that power. Immediately after the perfidious attack by the Turkish fleet, conducted by German officers, the Russian ambassadors at Constantinople received orders to leave the Ottoman Empire with all the personnel of the embassy and of the Russian consulates. It is with a perfect and confident tranquility, and invoking the aid of God, that Russia will meet this new aggression of the ancient persecutors of the Christian religion and all Slav peoples. It is not for the first time that the valiant armies of Russia will have triumphed over the Turkish hordes. They will know again how to chastise the reckless enemy of our fatherland.

SERBIA.

SERBIA against BULGARIA.

Notification of a state of war with Bulgaria, 16 October, 1915.

[Revue Générale de Droit International Public, Documents, 23 : 150.]

Serbia, having been attacked by the Bulgars without declaration of war on the part of the Government at Sofia, is obliged to consider herself as being, by the force of circumstances, in a state of war with Bulgaria. The official date of the state of war between Serbia and Bulgaria is 14 October, 1915, at 8 o'clock in the morning.

SERBIA against GERMANY.

Notification of the existence of a state of war between Serbia and Germany, dated 30 November, 1917.

[Archives of the Department of State.]

Referring to your letter of 6 October, 1917, concerning the request of the Serbian Military Mission that it be permitted to recruit Serbians in the United States for military service under the Serbian flag on the Saloniki front, I have the honor to transmit herewith copy of a note received from the Serbian legation at this capital containing the information that the Serbian Government considers that a state of war between Serbia and Germany "exists since 6 August, 1914."

SERBIA against TURKEY.

Proclamation against Turkey, 8 January, 1915.

[Serbian Official Journal, 8 Jan., 1915; see also Revue Générale de Droit International Public, Documents, 22 : 103.]

Turkey, having declared a holy war on Serbia and its allies, treaties, conventions, and agreements concluded between Turkey and Serbia cease to have effect; thus the treaty of 1 March, 1914, terminates from the 1st of December.

SIAM.

SIAM against AUSTRIA-HUNGARY AND GERMANY.

Notification of declaration of war against Germany and Austria-Hungary, 22 July, 1917.

[Official U. S. Bulletin, No. 62, p. 1.]

A telegram to the Department of State from the American legation at Bangkok, dated 22 July, states that Siam declared war against Germany and Austria about 6 o'clock that day. German

and Austrian subjects were being interned. The German and Austrian legations were protected by special guards. All German ships were interned at once.

TURKEY.

TURKEY against ROUMANIA.

Notification of declaration of war against Roumania, delivered to the Roumanian consul at Constantinople, 8 p. m., 31 August, 1916.

[Revue Générale de Droit International Public, Documents, 23 : 199.]

The council of Ottoman ministers met on 28 August, 1916, and decided to declare war on Roumania. This decision was immediately sanctioned by an iradé of the Sultan.

[Telegram to the Department of State from Constantinople, received 2 September, 1916.]

SECRETARY OF STATE,

WASHINGTON, *2053, 30 August, 6 p. m.*

Urgent.

Ottoman Council of Ministers yesterday adopted decision subsequently sanctioned by Imperial decree by which Turkey in common action with Germany and Bulgaria declares war on Roumania.

PHILIP.

TURKEY against ALLIES.

Notification of declaration of war against allies, 16 November, 1914.

[From a despatch to the Department of State from Constantinople, dated 16 November, 1914.]

On the 11th instant, a formal declaration of war was made by Imperial Iradé. I have the honor to enclose herewith copy and translation of a proclamation issued on the 12th instant, declaring a holy war. This manifesto was undoubtedly calculated to inflame the religious fanaticism of the Moslems and a demonstration was made by them on the 14th which forms the subject of a separate despatch.

TURKEY against GREAT BRITAIN, FRANCE and RUSSIA.

Manifesto of H. I. M. the Sultan, proclaiming a Holy War, 12 November, 1914.

[Translated from La Turquie, Constantinople, 13 November, 1914.]

To my army, to my navy:

Following the declaration of war between the Great Powers, I called you to arms to defend—in case of necessity—against enemies

seeking to take advantage of circumstances to defend our Government and our territories which have always been the object of illegal attacks. While we were living in armed neutrality, the Russian fleet, which was equipped to lay mines at the outlet of the Black Sea, unexpectedly opened fire on our fleet which was maneuvering. This attack was contrary to international law and while one should expect that Russia would make amends, both the said State and her allies, the English and the French, broke off their diplomatic relations with our Government, in recalling their ambassadors. Immediately thereafter, Russian soldiers attacked our eastern frontier; the allied English and French fleet fired on the Dardanelles, and the English ships on Akaba. As a result of these treacherous acts of hostility, repeated one after the other, we have been obliged to break the peace that we always wanted, to take arms to defend our legal interests in allying ourselves to Germany and Austria-Hungary.

The Russian Government has caused many territorial losses to the Imperial Government in the last three centuries. On every occasion it has sought to destroy by war and by a thousand kinds of devices every force which could increase our national power.

The Russian, French, and English Governments which by their oppressive dominations bring forth groans from millions of Mohammedans attached to our Caliphate have never ceased to nourish evil intentions toward our Caliphate and they have been the cause and the instigators of all the disasters that have befallen us. This, then, is the great war that we have undertaken to put to an end, with God's help, to the attacks directed against our Caliphate and against the other rights of our Empire. Thanks to Him, and to the spiritual assistance of our prophet, our fleet in the Black Sea, and our brave soldiers at the Dardanelles, at Akaba, and in the Caucasus have struck the first blow against the enemy, which increases our belief in our victory in the path of righteousness which is with us. To-day the countries and the armies of our enemies are crushed under the victorious feet of our allies, which tends to confirm our conviction.

My heroic soldiers!

Do not abandon for a single instant your resolution, your energy, and sacrifices in this holy war which we have declared in defense of our beloved religion and fatherland. Attack the enemy like lions because on your victory depends the life and the protection of my Government and of 300,000,000 of Moslems whom I have called to the great holy war by a holy fetva.

In the mesdjids, the mosques, the hearts of 300,000,000 of innocent and oppressed Mohammedans, addressing prayers and invocations to the Creator, are with you.

Soldiers, my children!

The duty which is incumbent on you to-day has not been assumed by any army in the world. In fulfilling this duty, show that you are the descendants of the Ottoman armies who at one time made the world tremble in order that the enemy of religion and of the state may not dare to foul our sacred soil and may not be able to disturb the tranquility of the sacred ground of Hedjaz which holds the Kaaba of God and the sacred tomb of the Prophet. Show clearly the existence of a Turkish Army and Navy which knows how to scorn death for their king, and which knows how to defend by arms their religion, their country, and their military honor. Right and justice are on our side and since enmity and oppression are on the side of our enemies there is no doubt that the protection of God and the aid of the Prophet are ours to destroy our enemies. We will come out of this Holy War a state strong and glorious, having repaired its losses of the past. Do not forget that you are the brothers in arms of the two most courageous and strong armies in the world with whom we march in this war.

Let those who may fall on the field of honor carry to those who before them have poured out their blood for their country good news of victory. Let the sword of the surviving heroes be sharpened.

MOHEMED RECHAD.

Proclamation of war against Great Britain, Russia, and France, 14 November, 1914.

[Translated from the Corriere della Sera, 16 November, 1914.]

Official Note Issued by the Turkish Government in Reply to the Circular Addressed by Sir Edward Grey to the Powers.

England complains that Turkey, without any preliminary notice, bought two warships from Germany. It should be borne in mind, however, that before war was declared the English Government ordered the seizure of two dreadnaughts that were being built for Turkey in British yards, and that one of these dreadnaughts, the *Sultan Osman*, was seized half an hour before the appointed time when the Turkish flag was to have been raised over the ship, and that finally no indemnity was paid for these confiscations.

It is natural, therefore, that Turkey, finding itself deprived of the two warships that were considered indispensable for the defense of the Empire, hastened to remedy the loss by acquiring the two ships offered in a friendly spirit by the German Government.

England complains of the closing of the Dardanelles. But the responsibility for this act falls on the British Government, as will appear from the following reasons, which determined the Turkish

Government to take the final decision: In spite of the neutrality of Turkey, England, under the pretext that German officers were serving on Turkish ships, declared officially that Turkish war vessels would be considered as hostile craft and would be attacked by the British fleet anchored at the entrance of the Straits.

In view of this hostile declaration Turkey found itself compelled to close the Dardanelles in order to insure the safety of the capital. And as to the claims of England, it is evident that the presence of German officers on the Turkish warships was a question of internal politics and should not, therefore, have given rise to any protest on the part of a foreign power.

(The note goes on to say that England, though asked to intervene in behalf of Turkey during the Balkan war, did everything that was in its power to bring about the downfall of the Turkish Empire. And when Adrianople was recaptured by the Turkish Army, the British prime minister did not hesitate to threaten Turkey with collective punishment on the part of the great powers if the city were not evacuated by the Turkish forces. The note continues as follows:)

The designs of the British are not limited to the countries of Europe; they extend to the Gulf of Persia. England has carried out its plan of impairing the sovereign rights of Turkey and of opening up a way of access into Arabia, for a long time coveted by the English.

Faithful to its policy of hostility England has ever opposed the attempts at reforms in Turkey. It exerted all its influence to prevent the powers from furnishing expert technical help to the Turkish Government. The Kaiser alone, disregarding the intrigues of Great Britain, authorized S. E. Liman von Sanders, Pasha, to reorganize the Turkish Army, that army which is challenging the British forces.

(After having recalled the Franco-British convention of 1904, which "passed a sentence of death on Morocco and on Egypt," and the agreement with Russia in reference to Persia, the note concludes:)

England for more than a century has been striving to destroy the freedom of the Moslem so as to open up their countries to the greedy exploitation of the British merchants. The English Government, pursuing its program of hatred against the Moslem States, has succeeded in giving to its policy a religious color which insures to it the support and the adhesion of the English people, puritanic and fanatical.

Let us be grateful to God who has given us the opportunity of victoriously defending the welfare of Islam against its three ruthless enemies, England, Russia, and France.

TURKEY against GREAT BRITAIN, RUSSIA, FRANCE, MONTENEGRO, and SERBIA.

Proclamation of a Holy War, the "Fetva," 15 November, 1914.

[Translated from the Corriere della Sera, 16 November, 1914.]

CONSTANTINOPLE, *15 Nov., 1914.*

Sixty thousand persons or thereabouts participated to-day in a mass meeting organized by several patriotic associations. The different corporations that took part in the event marched to Fatickh Square, in the old Stamboul, where an immense crowd had assembled. In the mosque of Fatickh the "Fetva" proclaiming the Holy War was read by a special delegation of the Sheik ul Islam. The text of the "Fetva," drawn in the form of answers and questions, as required by the rules of Islam, is as follows:

"If several enemies unite against Islam, if the countries of Islam are sacked, if the Moslem populations are massacred or made captive, and if in this case the Padishah in conformity with the sacred words of the Koran proclaims the Holy War, is a participation in this war a duty for all Moslems, old and young, cavalry and infantry? Must the Mohammedans of all countries of Islam hasten with their bodies and possessions to the Djat?" (Jehad) (Holy War).

Answer. "Yes."

"The Moslem subjects of Russia, of France, of England, and of all the countries that side with them in their land and sea attacks dealt against the Caliphate for the purpose of annihilating Islam, must these subjects, too, take part in the Holy War against the respective governments from which they depend?"

Answer. "Yes."

"Those who, at a time when all Moslems are summoned to fight, avoid the struggle and refuse to join in the Holy War, are they exposed to the wrath of God, to great misfortunes, and to the deserved punishment?"

Answer. "Yes."

"If the Moslem subjects of the said countries should take up arms against the Government of Islam, would they commit an unpardonable sin, even if they have been driven to the war by threats of extermination uttered against themselves and their families?"

Answer. "Yes."

"The Moslems who in the present war are under England, France, Russia, Serbia, Montenegro, and those who give aid to these countries by waging war against Germany and Austria, allies of Turkey, do they deserve to be punished by the wrath of God as being the cause of harm and damage to the Caliphate and to Islam?"

Answer. "Yes."

UNITED STATES.

UNITED STATES against AUSTRIA-HUNGARY.

Declaration of war against Austria-Hungary, 5.03 p. m., 7 December, 1917.[1]

[Public Resolution No. 17, 65th Congress.]

Sixty-fifth Congress of the United States of America, at the second session, begun and held at the city of Washington on Monday, the 3d day of December, 1917.

Joint resolution declaring that a state of war exists between the Imperial and Royal Austro-Hungarian Government and the Government and people of the United States and making provision to prosecute the same.

Whereas the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

CHAMP CLARK,
Speaker of the House of Representatives.

THOMAS R. MARSHALL,
Vice President of the United States and President of the Senate.

Approved, 7th of December, 1917.

WOODROW WILSON.

Proclamation of war against Austria-Hungary, 11 December, 1917.

[Official U. S. Bulltin, No. 183, p. 1.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Congress of the United States, in the exercise of the constitutional authority vested in them, have resolved, by joint reso-

[1] The resolution was signed by President Wilson at 5.03 p. m., 7 Dec., 1917. (New York Times, 8 Dec., 1917, p. 1, a.)

lution of the Senate and House of Representatives bearing date of December 7, 1917, as follows:

Whereas the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a state of War is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

Whereas, by sections 4067, 4068, 4069, and 4070 of the Revised Statutes, provision is made relative to natives, citizens, denizens, or subjects of a hostile nation or government, being males of the age of 14 years and upwards, who shall be in the United States and not actually naturalized;

Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby proclaim to all whom it may concern that a state of war exists between the United States and the Imperial and Royal Austro-Hungarian Government; and I do specially direct all officers, civil or military, of the United States that they exercise vigilance and zeal in the discharge of the duties incident to such a state of war; and I do, moreover, earnestly appeal to all American citizens that they, in loyal devotion to their country, dedicated from its foundation to the principles of liberty and justice, uphold the laws of the land and give undivided and willing support to those measures which may be adopted by the constitutional authorities in prosecuting the war to a successful issue and in obtaining a secure and just peace;

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens, or subjects of Austria-Hungary, being males of the age of 14 years and upward who shall be within the United States and not actually naturalized, shall be as follows:

All natives, citizens, denizens, or subjects of Austria-Hungary, being males of 14 years and upwards, who shall be within the United States and not actually naturalized, are enjoined to preserve the peace toward the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof, and to refrain from actual

hostility or giving information, aid, or comfort to the enemies of the United States, and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President; and so long as they shall conduct themselves in accordance with law they shall be undisturbed in the peaceful pursuit of their lives and occupations, and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States; and toward such of said persons as conduct themselves in accordance with law all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States.

And all natives, citizens, denizens, or subjects of Austria-Hungary, being males of the age of 14 years and upward, who shall be within the United States and not actually naturalized, who fail to conduct themselves as so enjoined, in addition to all other penalties prescribed by law, shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by sections 4069 and 4070 of the Revised Statutes, and as prescribed in regulations duly promulgated by the President;

And pursuant to the authority vested in me, I hereby declare and establish the following regulations, which I find necessary in the premises and for the public safety:

(1) No native, citizen, denizen, or subject of Austria-Hungary, being a male of the age of 14 years and upward and not actually naturalized, shall depart from the United States until he shall have received such permit as the President shall prescribe, or except under order of a court, judge, or justice, under sections 4069 and 4070 of the Revised Statutes;

(2) No such person shall land in or enter the United States, except under such restrictions and at such places as the President may prescribe;

(3) Every such person of whom there may be reasonable cause to believe that he is aiding or about to aid the enemy, or who may be at large to the danger of the public peace or safety, or who violates or attempts to violate, or of whom there is reasonable ground to believe that he is about to violate any regulation duly promulgated by the President, or any criminal law of the United States, or of the States or Territories thereof, will be subject to summary arrest by the United States marshal, or his deputy, or such other officers as the President shall designate, and to confinement in such penitentiary, prison, jail, military camp, or other place of detention as may be directed by the President.

This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done in the District of Columbia this 11th of December, A. D. 1917, and of the independence of the United States the one hundred and forty-second.

WOODROW WILSON.

By the President:
ROBERT LANSING,
Secretary of State.

UNITED STATES against GERMANY.

Declaration of war against Germany, 1.18 p. m., 6 April, 1917.[1]

[Public Resolution No. 1, 65th Cong.]

[S. J. Res. 1.]

Sixty-fifth Congress of the United States of America. At the first session begun and held at the city of Washington on Monday, the 2d day of April, 1917.

Joint resolution declaring that a state of war exists between the Imperial German Government and the Government and the people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against

[1] The resolution was signed by President Wilson at 1.18 p. m., 6 Apr., 1917. (New York Times, 7 Apr., 1917, p. 1, h.)

The Judge Advocate General of the Army has delivered the following opinion:

Upon the question raised as to the "date of commencement of the present war," with references to the action which should be taken on claims of officers and enlisted men of property destroyed in the military service under the act of Congress approved Mar. 3, 1885, providing that the act "shall not apply to losses sustained in time of war or hostilities with Indians."

Held, that the date of the commencement of the present war should be regarded as the date of approval of the joint resolution of Congress of Apr. 6, 1917 (Pub. No. 1, 65th Cong.), formally declaring a state of war as existing between the United States and the Imperial German Government.

(18–461, J. A. G., 30 June, 1917. Official U. S. Bulletin, No. 120, p. 6.)

"The words 'the beginning of the war,' as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war." Act Oct. 6, 1917 (Trading with the enemy act), sec. 2.

the Imperial German Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

CHAMP CLARK,
Speaker of the House of Representatives.
THOS. R. MARSHALL,
Vice President of the United States and
President of the Senate.

Approved, April 6, 1917.

WOODROW WILSON.

Proclamation of war with Germany, 6 April, 1917.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas the Congress of the United States in the exercise of the constitutional authority vested in them have resolved, by joint resolution of the Senate and House of Representatives bearing date this day "That the state of war between the United States and the Imperial German Government which has been thrust upon the United States is hereby formally declared";

Whereas it is provided by section 4067 of the Revised Statutes as follows:

Whenever there is declared a war between the United States and any foreign nation or Government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or Government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or Government, being males of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any such regulations which are found necessary in the premises and for the public safety;

Whereas by sections 4068, 4069, and 4070 of the Revised Statutes, further provision is made relative to alien enemies;

Now, therefore, I, Woodrow Wilson, President of the United States of America, do hereby proclaim to all whom it may concern that a state of war exists between the United States and the Im-

perial German Government; and I do specially direct all officers, civil or military, of the United States that they exercise vigilance and zeal in the discharge of the duties incident to such a state of war; and I do, moreover, earnestly appeal to all American citizens that they, in loyal devotion to their country, dedicated from its foundation to the principles of liberty and justice, uphold the laws of the land, and give undivided and willing support to those measures which may be adopted by the constitutional authorities in prosecuting the war to a successful issue and in obtaining a secure and just peace;

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the Revised Statutes, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States toward all natives, citizens, denizens, or subjects of Germany, being male of the age of 14 years and upwards, who shall be within the United States and not actually naturalized, who for the purpose of this proclamation and under such sections of the Revised Statutes are termed alien enemies, shall be as follows:

All alien enemies are enjoined to preserve the peace toward the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof, and to refrain from actual hostility or giving information, aid, or comfort to the enemies of the United States, and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President; and so long as they shall conduct themselves in accordance with law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States; and towards such alien enemies as conduct themselves in accordance with law, all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States.

And all alien enemies who fail to conduct themselves as so enjoined, in addition to all other penalties prescribed by law, shall be liable to restraint or to give security, or to remove and depart from the United States in the manner prescribed by sections 4069 and 4070 of the Revised Statutes, and as prescribed in the regulations duly promulgated by the President;

And pursuant to the authority vested in me, I hereby declare and establish the following regulations, which I find necessary in the premises and for the public safety:

(1) An alien enemy shall not have in his possession, at any time or place, any firearm, weapon, or implement of war, or component part thereof, ammunition, maxim or other silencer, bomb or explosive or material used in the manufacture of explosives;

(2) An alien enemy shall not have in his possession at any time or place, or use or operate any aircraft or wireless apparatus, or any form of signaling device, or any form of cipher code, or any paper, document or book written or printed in cipher in which there may be invisible writing;

(3) All property found in the possession of an alien enemy in violation of the foregoing regulations shall be subject to seizure by the United States;

(4) An alien enemy shall not approach or be found within one-half of a mile of any Federal or State fort, camp, arsenal, aircraft station, Government or naval vessel, navy yard, factory, or workshop for the manufacture of munitions of war or of any products for the use of the Army or Navy;

(5) An alien enemy shall not write, print, or publish any attack or threat against the Government or Congress of the United States, or either branch thereof, or against the measures or policy of the United States, or against the person or property of any person in the military, naval, or civil service of the United States, or of the States or Territories, or of the District of Columbia, or of the municipal governments therein;

(6) An alien enemy shall not commit or abet any hostile act against the United States, or give information, aid, or comfort to its enemies;

(7) An alien enemy shall not reside in or continue to reside in, to remain in, or enter any locality which the President may from time to time designate by Executive order as a prohibited area in which residence by an alien enemy shall be found by him to constitute a danger to the public peace and safety of the United States, except by permit from the President and except under such limitations or restrictions as the President may prescribe;

(8) An alien enemy whom the President shall have reasonable cause to believe to be aiding or about to aid the enemy, or to be at large to the danger of the public peace or safety of the United States or to have violated or to be about to violate any of these regulations, shall remove to any location designated by the President by Executive order, and shall not remove therefrom without permit, or shall depart from the United States if so required by the President;

(9) No alien enemy shall depart from the United States until he shall have received such permit as the President shall prescribe, or except under order of a court, judge, or justice, under sections 4069 and 4070 of the Revised Statutes;

(10) No alien enemy shall land in or enter the United States, except under such restrictions and at such places as the President may prescribe;

(11) If necessary to prevent violation of these regulations, all alien enemies will be obliged to register;

(12) An alien enemy whom there may be reasonable cause to believe to be aiding or about to aid the enemy, or who may be at large to the danger of the public peace or safety, or who violates or who attempts to violate, or of whom there is reasonable ground to believe that he is about to violate any regulation duly promulgated by the President, or any criminal law of the United States, or of the States or Territories thereof, will be subject to summary arrest by the United States marshal, or his deputy, or such other officer as the President shall designate, and to confinement in such penitentiary, prison, jail, military camp, or other place of detention as may be directed by the President.

This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 6th day of April, in the year of our Lord 1917, and of the independence of the United States the one hundred and forty-first.

[SEAL.] WOODROW WILSON.

By the President:

ROBERT LANSING,

Secretary of State.

SEVERANCES OF DIPLOMATIC RELATIONS.

AUSTRIA-HUNGARY.

AUSTRIA-HUNGARY with JAPAN.

Instructions in regard to Japan, 24 August, 1914.

[Austro-Hungarian Red Book; LXIX.]

Count Berchtold to Baron Müller, Tokio.

[Telegram.]

VIENNA, *24 August, 1914.*

The commander of H. M. S. *Elisabeth* has been instructed to participate in the action at Tsingtau.

In view of Japan's action against our ally, the German Empire, I request you to ask for your passports, notify consulates, and leave Japan for America together with our colony and the staffs of embassy and consulates. You will place our subjects and interests under the protection of the American ambassador. Passports will be handed to Japanese ambassador here.

AUSTRIA-HUNGARY with PORTUGAL.

Notification of the severance of diplomatic relations with Portugal, dated 16 August, 1918.

[Telegram to the Department of State from Lisbon.]

SECRETARY OF STATE,

WASHINGTON, *16 August—10 a. m.*

Department's telegram 361, 30 July. Germany declared war against Portugal on 9 March, 1916. Austria has not declared war on Portugal, but by virtue of her alliance with Germany, severed diplomatic relations with Portugal on 15 March, 1916, the Austrian minister leaving Lisbon the following day.

BIRCH.

AUSTRIA-HUNGARY with SERBIA.

Notification of severance of diplomatic relations with Serbia, 25 July, 1914.

[Austro-Hungarian Red Book, No. XXIV.]

Baron von Giesl to Count Berchtold.

[Telegram.]

SEMLIN, *25 July, 1914.*

The reply of the Royal Serbian Government to our demands of the 23d instant being inadequate, I have broken off diplomatic relations with Serbia and have left Belgrade with the staff of the legation.

The reply was handed to me at 5.58 p. m.

Notification of Austro-Hungarian severance of diplomatic relations, 25 July, 1914.

[Serbian Blue Book.]

No. 31.—M. Pashitch, Prime Minister and Minister of Foreign Affairs, to All the Royal Legations.

BELGRADE, *12/25 July, 1914.*

To-day at 5.45 p. m. I delivered the answer to the Austro-Hungarian note. You will receive to-night the exact text. You will see that we have gone as far as we could go, even to the extreme limit. When he received the note, the minister of Austria-Hungary declared that he must compare it with the instructions and that he would give me the answer immediately. As soon as I had returned to the ministry, the minister of Austria-Hungary informed me by letter that he was not satisfied with our answer, and that he would leave Belgrade this very evening with all the personnel of the legation. He intrusts to the minister of Germany the protection of the legation with all the furnishings and the archives, as well as the protection of the Austro-Hungarian subjects and interests in Serbia. Finally, he states that by the delivery of his letter diplomatic relations between Serbia and Austria-Hungary are completely broken.

The Royal Government has summoned the Skupshtina for the 14/27 of July at Nish, whither are going to-night all the ministries with their officials. In the name of the King, the Hereditary Prince has signed the order of mobilization for the army; to-morrow or the day following, a proclamation will be published in which citizens who are not soldiers are invited to remain quietly at home, and the soldiers to join the colors and to defend Serbia in the measure of their strength, in case she should be attacked.

AUSTRIA-HUNGARY with UNITED STATES.

Note severing diplomatic relations with United States, 8 April, 1917.

Chargé Grew to the Secretary of State.

[International Law Documents, Naval War College, 1917 : 52.]

AMERICAN EMBASSY,
VIENNA, *8 April, 1917.*

Minister for foreign affairs has just informed me that the diplomatic relations between the United States and Austria-Hungary are broken and has handed me passports for myself and the members of the embassy. He states that we may leave the Monarchy at your convenience and that every possible courtesy will be extended. Am telegraphing consuls to arrange their affairs and proceed to Vienna with a view to leaving for Switzerland if possible at end of week.

Following is translation of text of note handed me by minister:

IMPERIAL AND ROYAL MINISTRY OF THE IMPERIAL AND ROYAL HOUSE AND OF FOREIGN AFFAIRS,
VIENNA, *8 April, 1917.*

Since the United States of America has declared that a state of war exists between it and the Imperial German Government, Austria-Hungary, as ally of the German Empire, has decided to break off the diplomatic relations with the United States, and the Imperial and Royal Embassy in Washington has been instructed to inform the Department of State to that effect.

While regretting under these circumstances to see a termination of the personal relations which he has had the honor to hold with the chargé d'affaires of the United States of America, the undersigned does not fail to place at the former's disposal herewith the passport for the departure from Austria-Hungary of himself and the other members of the embassy.

At the same time the undersigned avails himself of the opportunity to renew to the chargé d'affaires the expression of his most perfect consideration.

CZERNIN.

To Mr. JOSEPH CLARK GREW,
Chargé d'Affaires of the United States of America.

GREW.

BELGIUM.

BELGIUM with GERMANY.

Note severing diplomatic relations with Germany, 4 August, 1914.

[Belgian Gray Book, No. 31.]

Monsieur Davignon, Belgian Minister for Foreign Affairs, to Herr von Below Saleske, German Minister.

[Translation.]

BRUSSELS, *4 August, 1914.*

SIR: I have the honor to inform your excellency that from to-day the Belgian Government are unable to recognize your diplomatic

status and cease to have official relations with you. Your excellency will find inclosed the passports necessary for your departure with the staff of the legation.

(Signed) DAVIGNON.

BOLIVIA.

BOLIVIA with GERMANY.

Note severing diplomatic relations with Germany, 14 April, 1917.

[Associated Press despatch, 14 April, 1917.]

LA PAZ, BOLIVIA, *14 April.*

The German minister and his staff have been handed their passports by the Bolivian Government, with a note declaring that diplomatic relations between Bolivia and Germany have been severed.

The note denounces the attacks of German submarines on neutral vessels as violations of international law and of The Hague convention. It recalls that the Bolivian minister to Berlin was on board the Holland-Lloyd liner *Tubantia* when that vessel was sunk in neutral waters a year ago. The note concludes:

Your excellency will understand that although we regret the breach of diplomatic relations between Bolivia and the German Empire, such relations have become insupportable under existing circumstances. In consequence your excellency will find herewith passports for yourself and the members of your legation.

The note declares that German subjects and property will enjoy all liberties guaranteed by law, provided that they do not commit any act of delinquency, either collectively or as individuals.

Notification of the severance of diplomatic relations with Germany, 14 April, 1917.

Bolivian Minister to the Secretary of State.

[Archives of the Department of State.]

LEGATION OF BOLIVIA,
WASHINGTON, D. C., *14 April, 1917.*

SIR: I have the honor to inform your excellency that my Government, on yesterday, delivered his passport to the German minister and declared the diplomatic relations between Bolivia and the German Empire to be broken off.

When my Government received the communication of the Imperial Government of Germany relative to the unrestricted use of its submarines, it not only protested against such a resolution but declared that on this question it stood with the Government of the United States in the defense of the neutral rights and the laws of mankind ignored by the German Government. The rupture of re-

lations consummated to-day is the natural consequence of the attitude taken by Bolivia which gladly sides with the Government of the United States in the holy cause of the defense of right and justice against the mastery of force and violence.

I avail myself of this opportunity to reiterate to your excellency the sentiments of my most distinguished consideration.

I. CALDERON.

To His Excellency the SECRETARY OF STATE,
Washington, D. C.

BRAZIL.

BRAZIL with GERMANY.

Notification of severance of diplomatic relations with Germany, 11 April, 1917.

[International Law Documents, Naval War College, 1917 : 64.]

RIO DE JANEIRO, *11 April, 1917.*

Considering that the inquiry and the conclusions cabled by the legation at Paris on the subject of torpedoing of the steamer *Parana* established the fact that the *Parana* was proceeding under reduced speed, was illuminated outside and inside, including the shield with the name "Brazil," and

Considering that the steamer received no warning to stop, according to the unanimous deposition of the crew, and

Further, that the steamer was torpedoed and was shelled five times, and that the submarine made no attempt to save life,

Then, in the presence of such aggravating circumstances and in accord with the note of 9 February and the telegram of 13 February sent by the Brazilian Government to the legation at Berlin, the Brazilian Government severs relations with Germany.

Notification of the severance of diplomatic relations with Germany, 12 April, 1917.

The Brazilian Minister to the Secretary of State.

[Archives of the Department of State.]

EMBASSY OF BRAZIL, WASHINGTON, *12 April, 1917.*

Mr. SECRETARY OF STATE: I have this moment received from my Government instructions to advise that of your excellency that on yesterday his passports were handed to the minister of Germany at Rio de Janeiro and a telegram was sent to our minister at Berlin instructing him to ask for his, thus bringing to an end the diplomatic relations of Brazil with that Empire.

By note of 9 February last, Brazil protested against the manner in which the German Government seeks to hamper maritime commerce with the enemy countries and declared that Government responsible for injuries to persons or property of Brazilian citizens in the lawful exercise of their rights on the open seas if found to be in violation of the principles of international law or of the conventions signed between the two countries. And in order to remove all doubts on that point our legation at Berlin, on 13 February, notified the German Government that "we consider essential to the maintenance of relations with Germany that no Brazilian vessel be attacked in any way and under any pretense whatsoever, even that of carrying contraband of war, the belligerents having included everything in that class."

My Government was grieved to hear of the sinking of the Brazilian steamer *Parana* at 11 p. m. on the 8th of this month while nearing the port of Cherbourg at reduced speed and showing the regulation lights and also in large illuminated letters the word "Brazil." The ship was not summoned to stop for an examination of her papers and cargo, was torpedoed without warning, five cannon shots being fired into her besides. Although near by and in full sight, the submarine extended no assistance to the shipwrecked crew. Several Brazilians lost their lives, others were injured in that brutal attack on a ship of a neutral country. The President of the United States of Brazil judged that the incident left no room for explanations or diplomatic negotiations with the Government of Germany, toward which that of Brazil ever fulfilled its promises and obligations freely entered into and, to his regret to be sure, resolved to break our diplomatic and commercial relations with the German Empire.

I avail myself of this opportunity to renew to your excellency, Mr. Secretary of State, the assurances of my highest consideration.

DOMICIO DE GAMA.

To His Excellency Mr. ROBERT LANSING,
Secretary of State of the United States of America.

CHINA.

CHINA with GERMANY.

Note severing diplomatic relations with Germany, noon, 14 March, 1917.

[Official Documents Relating to the War, Chinese Foreign Office, 1917 : 10.]

Chinese Foreign Office to German Minister at Peking, Peking 14 March, 1917.

YOUR EXCELLENCY:

With reference to the new submarine policy of Germany, the Government of the Republic of China, actuated by the desire to further

the cause of the peace of the world and to maintain the sanctity of international law, addressed a protest to your excellency on 9 February and declared that if, contrary to its expectations, its protest was ineffectual, the Chinese Government would be constrained to sever the diplomatic relations at present existing between the two countries. During the lapse of a month no heed has been paid to the protest of the Chinese Government in the activities of German submarines, which have caused the loss of many Chinese lives.

On 10 March a reply was received from your excellency. Although it states that the German Government is willing to open negotiations to arrive at a plan for the protection of Chinese life and property, yet it declares that it is difficult for Germany to cancel her blockade policy and, therefore, is not in accord with the object of the protest, and the Chinese Government, to its deep regret, considers its protest ineffectual.

Therefore, the Chinese Government is constrained to sever the diplomatic relations at present existing with the German Government. I have the honor to send herewith a passport for your excellency, the members of the legation staff, and their families and retinue, for their protection while leaving Chinese territory.

As regards the German consular officers, this ministry has instructed the different commissioners for foreign affairs in the treaty ports to issue them similar passports for leaving the country.

I avail, etc.

(Signed) WU-TING-FANG.

COSTA RICA.

COSTA RICA with GERMANY.

Executive decree of Costa Rica severing diplomatic relations with the German Government, dated 21 September and published 22 September, 1917.

[Archives of the Department of State.]

Federico Tinoco, Constitutional President of the Republic of Costa Rica.

Whereas Costa Rica has profoundly deplored the offenses which German militarism commits systematically in the present war against all the principles resting upon morality and law, liberty and human welfare, but has nevertheless in its desire to preserve the strictest neutrality maintained under these circumstances the strictest silence; and

Whereas this attitude does not preserve national interests from the effects of the policy of the German Government, whose mission in neutral countries is that of provoking, according to circumstances, conflicts of either international or internal order; and

Whereas it is from all points of view desirable that, in order to cope with this constant danger threatening us as much as possible, we take precautions analagous to those adopted by certain of the Republics of the American Continent, whose interests, at the same time, are firmly linked with ours by the strictest solidarity;

Now, therefore, in accordance with the resolve of the Council of Government, and in exercise of the power conferred upon him by paragraph 9, article 99, of the Constitution of the State,

DECREES:

SOLE ARTICLE. From this date forward diplomatic relations with the Government of the German Empire are suspended.

Ordered communicated and published.

Given in the city of San José this twenty-first day of September of the year one thousand nine hundred and seventeen.

F. TINOCO.

Carlos Lara, *Minister of Foreign Affairs.*
Amadeo Johanning, *Minister of Government and Police.*
Manuel F. Jimenez, *Minister of Finance and Commerce.*
R. Brenes Mesen, *Minister of Public Instruction.*
Juan B. Quiros, *Minister of Promotion.*
J. J. Tinoco, *Minister of War and Marine.*

ECUADOR.

ECUADOR with GERMANY.

Notification of severance of relations with Germany, 8 December, 1917.

The Minister of Ecuador to the Secretary of State.

[Archives of the Department of State.]

No. 47

LEGATION OF ECUADOR,
WASHINGTON, *8 December, 1917.*

Mr. SECRETARY OF STATE: It is my very high honor to inform, by order of my Government, the Government of the United States through the worthy medium of the Secretary of State, that as a result of incidents instigated by German agents in Ecuador which offended the dignity of the nation and the spirit of continental solidarity, the diplomatic relations between my Government and that of Germany have been formally broken.

I am pleased to put on record this event which is proof notably of the nation's pride and of the spirit of pan-American solidarity which inspires my Government but also of its deep-seated and decided adhesion to the ideas and sentiments that have left a fathomless chasm between the civilized world and the Government of Germany.

I avail myself of this opportunity to reiterate to the Secretary of State the assurances of my highest and most distinguished consideration.

R. H. ELIZALDE.

To Mr. ROBERT LANSING,
Secretary of State, Washington.

FRANCE.

FRANCE with AUSTRIA-HUNGARY.

Note relating to severance of diplomatic relations with Austria-Hungary, 10 August, 1914.

[Austro-Hungarian Red Book, LXIII.]

Count Szécsen to Count Berchtold.

[Telegram.]

PARIS, *10 August, 1914.*

Received telegram of 9th August.

Immediately communicated contents to M. Doumergue. The minister, having received a similar telegraphic report from M. Dumaine concerning his conversation with you, is satisfied that our troops are not on the French frontier, but says that he has positive information that an Austro-Hungarian army corps has been transported to Germany, thus enabling the latter to withdraw her own troops from the German territories now occupied by our forces. In the minister's view this facilitates the military operations of the Germans.

I have repeatedly called the minister's attention to the wording of your reply; he recognizes that there could be no question of an active participation of our troops in the Franco-German war, but insists that the presence of our troops on German territory is undeniable and represents military support to Germany. Under these circumstances, he has instructed the French ambassador in Vienna to ask immediately for his passports and to leave Vienna with the entire staff of the embassy to-day.

The minister told me that, under the circumstances, my presence here could be of no avail, but owing to public excitement, might even give rise to unpleasant incidents which he would like to avoid. He offered to have a special train ready to-night for my conveyance out of France. I replied that it would be impossible for me to obtain instructions from you by to-night, but in view of the recall of M. Dumaine, I begged him to have my passports handed to me.

Notification of the severance of diplomatic relations, 11 August, 1914.

[Archives of the Department of State.]

EMBASSY OF THE FRENCH REPUBLIC
TO THE UNITED STATES,
MANCHESTER, MASS., *11 August, 1914.*

Mr. SECRETARY OF STATE: The Government of the Republic has positive knowledge, despite the declaration of the Austro-Hungarian Ministry of Foreign Affairs and of the ambassador of Austria at Paris to the contrary, that Austrian troops have entered Germany on their way to the French frontier. These troops enabling the Berlin Government to use the forces whose place they take in German territory had to be considered by my Government as unquestionably operating against France, in point of law and of fact.

The ambassador of the Republic at Vienna has consequently been ordered to ask for his passports. The ambassador of Austria-Hungary at Paris has likewise asked for his passports and every arrangement has been made by my Government to insure his departing under the usual conditions of international courtesy.

I have the honor to bring these events to your excellency's knowledge.

Be pleased to accept, Mr. Secretary of State, the assurances of my high consideration.

CLAUSSE.

His Excellency the Honorable W. J. BRYAN,
Secretary of State of the United States.

FRANCE with TURKEY.

Notification of the severance of relations with Turkey, 7 November, 1914.

[From a despatch to the Department of State from Constantinople.]

* * * Early on 30 October, the Russian ambassador demanded his passports and his action was followed by the English and French ambassadors. At their request the Italian ambassador and I called on the Minister of the Interior and urged prompt and courteous action toward the departing ambassadors. This was promised and also that safe conduct should be granted British and French consuls. Russian consuls must remain till Russia has given safe conduct to Ottoman consuls, and neither they nor Russian citizens have yet received permission to depart.

GERMANY.

GERMANY with ITALY.

Notification of the severance of diplomatic relations with Germany, dated 24 May, 1915.

[Telegram to the Department of State.]

SECRETARY OF STATE,
WASHINGTON, *24 May—6 p. m.*

Understand that German ambassador has asked for his passports and is leaving Rome to-night.

AMERICAN EMBASSY, ROME.

GERMANY with JAPAN.

Note concerning severing diplomatic relations with Japan, 23 August, 1914.

[Austro-Hungarian Red Book, LXVIII.]

Prince Hohenlohe to Count Berchtold.

[Telegram.]

BERLIN, *23 August, 1914.*

The Japanese minister here has been informed by the Foreign Office that the German Imperial Government had no intention to reply to the Japanese ultimatum. The German Government has instructed its ambassador in Tokyo to leave Japan upon the expiration of the time limit fixed by Japan for noon to-day. Simultaneously the Japanese chargé d'affaires is to be handed his passports.

At noon the chargé d'affaires received his passports; he will leave Berlin to-morrow morning with the staff of the embassy.

GREAT BRITAIN.

GREAT BRITAIN with BULGARIA.

Proclamation severing diplomatic relations with Bulgaria, 13 October, 1915.

[London Times, 13 Oct., 1915, p. 9f.]

His Majesty's Government announce that the Bulgarian minister has been handed his passports and that diplomatic relations between Great Britain and Bulgaria have been broken off.

GREAT BRITAIN with TURKEY.

Notification of severance of relations with Turkey, dated 7 November, 1914.

[From a despatch to the Department of State from Constantinople.]

* * * Early on 30 October, the Russian ambassador demanded his passports and his action was followed by the English and French ambassadors. At their request the Italian ambassador and I called on the Minister of the Interior and urged prompt and courteous action toward the departing ambassadors. This was promised and also that safe conduct should be granted British and French consuls. Russian consuls must remain till Russia has given safe conduct to Ottoman consuls, and neither they nor Russian citizens have yet received permission to depart.

GREECE.

GREECE with AUSTRIA-HUNGARY.

[Text of the note of the Government of Alexander severing diplomatic relations with Austria-Hungary is not available, According to the London Times of 3 July, 1917, it was identical with the note addressed to Germany. See below.]

GREECE with AUSTRIA-HUNGARY and TURKEY.

Notification of severance of diplomatic relations, 2 July, 1917.

[Telegram to the Department of State from Athens.]

SECRETARY OF STATE,
WASHINGTON, D. C., *2 July, 12 noon.*

372.

Minister of Foreign Affairs informs me Greece at war Germany, Bulgaria. Relations broken off other central powers.

DROPPERS.

GREECE with GERMANY.

Note severing diplomatic relations with Germany, 29 June, 1917.

[London Times, 3 July, 1917, p. 7, d.]

Greek Chargé d' Affaires to German Foreign Office.

In consequence of the happily effected union of the two parties in Greece which had hitherto been separated, and in view of the fact that several Greek regiments are taking part in the hostilities on the Balkan front, the Greek Government considers that it is

no longer possible to maintain official relations with the German Government. (The same *mutatis mutandi* to Austro-Hungarian Government.)

GREECE with TURKEY.

Note severing diplomatic relations with Turkey, 29 June, 1917.

[See Greece with Austria-Hungary, Supra p. 84.]

GUATEMALA.

GUATEMALA with GERMANY.

[Archives of the Department of State.]

Decree No. 727.

Manuel Estrada Cabrera, Constitutional President of the Republic, considering:

Whereas under date of 7th March of the current year the Government of Guatemala presented a formal protest before the Imperial German Government on account of the violation of international law involved in the procedure adopted by the German Admiralty in its submarine warfare in the present European war; a procedure which was officially communicated on the 9th of February of 1917;

Whereas the above protest was not only disregarded as to the cessation of the above-mentioned method of procedure, but it did not even meet with the courtesy of a reply from the Imperial Government or from its diplomatic representative in Guatemala;

Whereas such manner of proceeding constitutes a complete contravention of the rights and interests of Guatemalans, which the Government has the sacred obligation to protect and safeguard, and

Whereas due to these reasons, it becomes imperative to put in force such measures as will safeguard the dignity and honor of the country and prevent future and positive evils;

Therefore: In Cabinet meeting and in conformity to the powers vested in him,

Decrees:

ARTICLE 1. From the present date the existing diplomatic relations with the Imperial German Government are severed.

ARTICLE 2. To hand his passports to His Excellency Doctor Curt Lehmann, envoy extraordinary and minister plenipotentiary of Germany in Guatemala, and to all the persons who compose his family and retinue, fixing a period of eight days in which they have to leave the national territory. At the same time Doctor Manuel Arroyo, the Guatemalan diplomatic representative in Germany will be instructed

to request from the Imperial Government his respective passport and to leave said country at the earliest possible time.

ARTICLE 3. To cancel the exequaturs of the German consuls accredited to Guatemala and to withdraw the commissions from the national consuls accredited to that Empire.

The Minister for Foreign Affairs is intrusted with the compliance of this decree, and he will communicate it to the National Legislative Assembly.

Let it be communicated, published, and enacted.

Done in the Palace of the Executive Power, in Guatemala, this twenty-seventh day of the month of April of one thousand nine hundred and seventeen.

MANUEL ESTRADA C.

The Secretary of State in the Department of Finance and Public Credit.

G. AGUIRRE.

The Secretary of State in the Department of War.

LUIS OVALLE.

The Secretary of State in the Department of Public Works.

LUIS F. MENDIZABAL.

The Secretary of State in the Department of Government and Justice.

J. M. REINA ANDRADE.

The Secretary of State in the Department of Public Education.

J. ED. GIRÓN.

The Secretary of State in the Department of Foreign Relations.

LUIS TOLEDO HERRARTE.

HAITI.

HAITI with GERMANY.

The American Minister to the Secretary of State.

[Paraphrase of telegram to the Department of State.]

From Port au Prince. Dated 17 June, 1917. Recd. 18 June, 12.50 p. m.

SECRETARY OF STATE,

WASHINGTON, *17 June, noon.*

The legation was notified by the Minister of Foreign Affairs of the severance of diplomatic relations between Haiti and the German Empire.

The legation was requested, in connection with the above, by the Government of Haiti to obtain safe conduct regarding war vessels

of the United States for representative of Germany, his wife, and suite via a Dutch boat, whose name is not stated, to a destination not given.

BLANCHARD.

HONDURAS.

HONDURAS with GERMANY.

Secretary of Foreign Affairs of Honduras to the Secretary of State.

[Archives of the Department of State.]

DEPARTMENT OF FOREIGN RELATIONS OF
THE REPUBLIC OF HONDURAS,
TEGUCIGALPA, *17 May, 1917.*

EXCELLENCY: I have the honor to inform your excellency that, in view of the conflict that has sprung between the United States and the Government of the German Empire, the Government of Honduras, impelled by the cordial friendship existing between Honduras and the United States of America, by their common interests and the sentiment of American solidarity, has resolved to join the cause upheld by your excellency's Government in that conflict. It therefore tenders its decided cooperation in every possible way, and further declares that if your excellency deems it suitable to enter upon a convention on that subject, the Government of this Republic will forthwith instruct its minister at Washington to that effect.

Trusting that your excellency's Government will accept this spontaneous declaration, my Government even now assumes the attitude which befits the situation.

This declaration was communicated to-day to the American legation at this capital, with a request that it be cabled to your excellency's Government.

I cherish the hope that the attitude taken by the Government of this Republic will be acceptable to your excellency's Government as a token of the sincere and loyal friendship maintained by Honduras with the United States of America.

It gives me great pleasure on this occasion to reiterate to your excellency the assurances of my highest and most distinguished consideration.

MARIANO VASQUEZ.

To His Excellency the SECRETARY OF STATE
OF THE UNITED STATES OF AMERICA,
Washington, D. C.

JAPAN.

JAPAN with AUSTRIA-HUNGARY.

Notification of severance of diplomatic relations with Austria-Hungary, dated 6 August, 1918.

[Telegram to the Department of State from Tokyo.]

SECRETARY OF STATE,
WASHINGTON, D. C., *6 August—6 p. m.*

Your 31st July. Japan broke relations with Austria 25 August, 1914; has never declared war.

MORRIS.

LIBERIA.

LIBERIA with GERMANY.

Note severing diplomatic relations with Germany, 5 May, 1917.

[Official United States Bulletin, No. 51, p. 4.]

Mr. King, Liberian Secretary of State, to the German Consul at Monrovia.

5 MAY, 1917.

SIR: As the policies of a nation must always be adjusted to meet new conditions affecting its vital interests as they arise from time to time, so the transpiring of certain events in connection with the great European war which has staggered humanity in its ruthless operations and stupendous financial output have rendered necessary a change of Liberia's attitude of strict neutrality hitherto assumed and consistently maintained. I refer to the new German submarine program, drawn up by the Imperial German Government and put into execution on the 1st day of February of the present year, the detailed operations of which you are very well conversant with and informed.

While Liberia has endeavored to stand aloof from a conflict, the original causes of which were of purely European concern and interest, yet the method adopted by the Imperial German Government and its allies to vindicate what they conceive to be their national rights and honor and to bring to their arms a speedy and successful victory by such means as the sinking of unarmed ships of their enemies and neutrals without warning, the bombardment of undefended towns and villages, and the violation of the rights of small neutral States, are such flagrant violations of the rules of civilized warfare as to justly create on the part of Liberia grave apprehensions and fears of the eventual permanent establishment of the doc-

trine of "might" over "right" in the realms of international relations, which doctrine, if allowed to obtain, can only result in the complete subjugation and elimination from the sisterhood of nations of all small and weak States.

Hence the Government and people of Liberia can not any longer in their own interest continue to view with indifference and unconcern the present world's cataclysm, especially since the new German submarine program seriously threatens the lives of Liberian citizens traveling on the high seas as passengers and crew on allied or neutral ships.

Although Liberia is fully conscious of her utter inability to enforce upon any of the belligerent nations respect and due regard for the rights and safety of her citizens, yet that fact will not deter her from protesting, by the most effective means at her disposal, against any attempt to infringe upon her sacred international rights—in spite of the veiled threats made by the acting Imperial German consul in his published statement of "war news," issued and circulated in this city under the official seal of his Imperial Government on the 21st of April, to the effect that powers of the third and last importance will be held to strict accountability for all damage done to German interest, the bill for which will be presented and payment thereof enforced after the happy issues of the war.

The Liberian Government is therefore constrained, as an earnest protest against the continued enforcement of the new German submarine program, which threatens the lives of Liberian citizens, as well as grave financial and economic embarrassments to the Republic, to sever relations with the Imperial German Government and to revoke the exequatur granted to Germany's official representative at this capital.

With assurances of my high esteem and profound respect, I have the honor to subscribe myself,

Your obedient servant,

C. D. B. KING,
Secretary of State.

MONTENEGRO.

MONTENEGRO with GERMANY.

Notification of the severance of diplomatic relations with Germany. 9 August, 1914.

[London Times, 12 Aug., 1914, p. 6, c.]

NISH, *9 August, 1914.*

The Montenegrin Government has handed the German minister his passports, and hostilities with Austria began yesterday. The Austrian fleet has bombarded Antivari.

NICARAGUA.

NICARAGUA with GERMANY.

Notification of the severance of diplomatic relations with Germany, 19 May, 1917.

[Paraphrase of a telegram from Minister Jefferson to the Secretary of State.]

MANAGUA, *19 May, 1917.*

Both Houses of Congress of Nicaragua yesterday afternoon passed a decree severing diplomatic relations with the Imperial German Empire. The President of the Republic was authorized by Congress to concede to the United States the use of its ports, territorial waters, means of communication, and all analogous facilities which might be found of benefit in carrying on the war with Germany.

German subjects residing in Nicaragua will, it is declared, be permitted to continue without molestation of any kind, but they will be subject to the observance and respect of the laws and the authorities of Nicaragua.

The Executive is given authority to regulate and make effective the above-mentioned orders and also to dictate any means that may be found necessary in his judgment for the better compliance with this law.

PERU.

PERU with GERMANY.

Resolution severing diplomatic relations with Germany, 5 October, 1917.

[Despatch to the State Department from Lima, No. 264, 29 October, 1918.]

The following resolution was finally accepted and adopted by the Congress of Peru:

In view of the declarations of the Minister of Foreign Affairs, and in view of the principles proclaimed by the Chancellory and the Chambers, Congress approves the rupture of diplomatic relations with the German Empire, proposed by the Executive.—Lima, 5 October, 1917.

Notification of severance of diplomatic relations with Germany, 6 October, 1917.

[Official U. S. Bulletin, No. 131, p. 4.]

Francisco Tudela, Minister for Foreign Affairs of Peru, to the Secretary of State of the United States.

WASHINGTON, *6 October, 1917.*

YOUR EXCELLENCY: From the beginning of the great war, in which the most powerful peoples of the world are involved, the Peruvian

Government has strictly performed the duties imposed upon it by international law and has loyally maintained the neutrality of the Republic, trusting that its neutral rights would in turn be respected by the belligerents. But when the conflagration spread to the American continent, notwithstanding the efforts exerted for nearly three years by the United States Government to keep that great people out of the conflict, Peru was confronted by new duties springing from its passionate desire for the continental solidarity that has ever been the goal of its foreign policy, and by the necessity of defending its rights from the new form of maritime warfare set up by Germany.

That was the reason why, on receiving notice of the belligerency of the United States caused by the proceedings of the Berlin Government in violation of international law, the Peruvian Government, far from declaring itself neutral, recognized the justice of the stand taken by the Washington Government. And for the same reason the President of Peru, in his message to Congress, and the minister for foreign affairs, in the Chamber of Deputies, with the express approval of the Parliament, solemnly affirmed the adhesion of our country to the principles of international justice proclaimed by President Wilson.

It was the Peruvian Government's wish that the policy of the whole continent be a concerted ratification of the attitude of the Washington Government, which took up the defense of neutral interests and insisted on the observance of international law. But the course of events did not result in joint action; each country shaped its course in defense of its own invaded rights as it was individually prompted in its adherence to the principles declared by the United States.

Peru, for its part, while endeavoring to give prevalence to a uniform continental policy, maintained with the utmost firmness the integrity of its rights as a sovereign nation in the face of Germany's disregard of the principles of naval warfare. It was the defense of those rights which led it to sever its diplomatic relations with the Imperial Government as the result of an outrage for which it duly but vainly claimed appropriate reparation; the sinking of the vessel *Lorton* by a German submarine on the coast of Spain while the ship was plying between neutral ports, engaged in lawful trade, without infringing even the German rules respecting closed zones—unknown to international law.

The reluctance of the Imperial Government to meet our just demands according to the general principles of international law; the very arbitrary rules laid down by that Government; and the unsuccessful presentation of a precedent in an analogous claim favorably entertained by it—these are the facts in which Peru reads the complete lack of justice that marks the course of the German

Government's policy and the sound foundation there is for the effort to check that policy, so as to establish in the world a juridical standard that will forever cause justice to prevail in international relations.

The contents of this message and the documents which I shall forward to your excellency will enable your Government to acquaint itself with the fundamental grounds upon which our attitude rests, and also with the negotiations with Germany above referred to, which the Government has now brought to an end by recalling the minister of the Republic at Berlin and delivering his passports to the representative of Germany at this capital, with the express approval of the Parliament.

I avail myself of this opportunity to tender to your excellency the assurances of my high and distinguished consideration.

FRANCISCO TUDELA.

ROUMANIA.

ROUMANIA with BULGARIA.

[No text for the severance of diplomatic relations between Roumania and Bulgaria is available, but the following extract from the Bulgarian declaration of war refers to the occurrence.]

[Revue Générale de Droit International Public, Documents, 23 : 199.]

Finally M. Radeff has been forbidden, since 28 August, to communicate with his Government. His passports were sent to him without the Bulgarian Government having been able to give him at any time instructions with reference to an eventual rupture of relations. On the 30th it was your excellency who demanded his passports and notified of the rupture of diplomatic relations as the natural consequence of the event which had preceded.

RUSSIA.

RUSSIA with BULGARIA.

Ultimatum to Bulgaria, 3 October, 1915.

[International Documents, Naval War College, 1917 : 208.]

Foreign Office to Russian Minister in Bulgaria.

The events which are taking place in Bulgaria at this moment give evidence of a definite decision of King Ferdinand's Government to place the fate of its country in the hands of Germany.

The presence of German and Austrian officers at the ministry of war and on the staff of the army, the concentration of troops in the zone bordering Serbia, and the extensive financial support accepted

from our enemies by the Sofia cabinet, no longer leave any doubt as to the object of the military preparations of Bulgaria.

The powers of the entente, who have at heart the realization of the aspirations of the Bulgarian people, have on many occasions warned M. Radoslavoff that any hostile act against Serbia would be considered as directed against themselves. The assurances given by the head of the Bulgarian Cabinet in reply to these warnings are contradicted by the facts.

The representative of Russia, which is bound to Bulgaria by the imperishable memory of her liberation from the Turkish yoke, can not sanction by his presence preparations for fratricidal aggression against a Slav and allied people. The Russian minister has, therefore, received orders to leave Bulgaria with all the staffs of legation and consulates if the Bulgarian Government does not within 24 hours openly break with the enemies of the Slav cause and of Russia and does not at once proceed to send away officers belonging to armies of States which are at war with the powers of the entente.

Notification of severance of diplomatic relations with Bulgaria, 7 October, 1915.

[International Law Documents, Naval War College, 1917 : 209.]

Bulgaria's reply to the Russian ultimatum is unsatisfactory. The Russian minister has notified Premier Radoslavoff of a rupture of diplomatic relations between the two countries.

Russian interests in Bulgaria have been confided to the Dutch chargé d'affaires.

Bulgaria's reply was delivered at 2.40 o'clock on the afternoon of 5 October (Tuesday).

RUSSIA with ROUMANIA.

Notification of severance of relations with Roumania, dated 1 February, 1918.

[From a despatch to the Department of State from Paris.]

PARIS, *1 February, 1918.*

SECRETARY OF STATE,

WASHINGTON, *1 February—6 p. m.*

Joint telegram from ministers of United States, England, France, and Italy dated Jassy, 30 January. The President of the Council has to-day communicated the telegram which he addressed to the representatives of our Governments in Roumania informing them of the rupture of diplomatic relations with the Maximalist Government and the seizure of the Roumanian State funds deposited at Moscow. At the same time he made known to us the request of the Ukrainian Government to send Roumanian troops to Kiev, Poltawa, and Odessa.

RUSSIA with TURKEY.

Note regarding severance of diplomatic relations with Turkey, 7 November, 1914.

[From despatch to the Department of State from Constantinople.]

* * * Early on 30 October, the Russian ambassador demanded his passports and his action was followed by the English and French ambassadors. At their request the Italian ambassador and I called on the Minister of the Interior and urged prompt and courteous action toward the departing ambassadors. This was promised and also that safe conduct should be granted British and French consuls. Russian consuls must remain till Russia has given safe conduct to Ottoman consuls, and neither they nor Russian citizens have yet received permission to depart.

Note regarding severance of diplomatic relations with Turkey, 29 October, 1914.

[Second Russian Orange Book, No. 91.]

Russian Minister of Foreign Affairs to Russian Ambassador at Constantinople.

[Telegram.]

PETROGRAD, *16 (29) October, 1914.*

The Turks opened hostilities against the unfortified port of Theodosia and the gunboat stationed at the port of Odessa.

Consequently, you will please take steps for the departure of our consular officers, placing the protection of our interests in the hands of the Italian ambassador.

In this connection you will inform the Porte that as a result of the said hostilities you have been ordered to leave Constantinople with all of your subordinate officers.

Communicate to Bordeaux, London, Nish, Sofia, Bucharest, Rome, Athens, and Cettinje.

SAZONOFF.

Notification of breaking diplomatic relations with Turkey, 2 November, 1914.

[British Parl. Papers, Misc. No. 13 (1914); 2d Russian Orange Book, No. 97.]

Telegram communicated by Count Benckendorff on 2 November, 1914.

[Translation.]

M. Sazonoff telegraphs on 1 November, 1914, as follows:

The Turkish chargé d'affaires has just read me the following telegram from the Grand Vizier:

I request you to inform the Minister for Foreign Affairs that we infinitely regret that an act of hostility, provoked by the Russian fleet, should have com

promised the friendly relations of the two countries. You can assure the Imperial Russian Government that the Sublime Porte will not fail to give the question such solution as it entails, and that they will adopt fitting measures to prevent a recurrence of similar acts. You can declare forthwith to the minister that we have resolved no more to allow the imperial fleet to enter the Black Sea, and that we trust that the Russian fleet, on their side, will no longer cruise in our waters. I have the firm hope that the Imperial Russian Government will give proof, on this occurrence, of the same spirit of conciliation in the common interests of both countries.

I replied to the Turkish chargé d'affaires that I most categorically denied what he had just said respecting the initiation of hostilities by the Russian fleet; I told him that I feared it was too late to negotiate; that nevertheless, if the Sublime Porte decided upon the immediate dismissal of all the German military and naval officers and men it might be possible to consider the question, and that discussion might not be impossible to reach some basis of satisfaction to be given by Turkey for the illegal act of aggression against our coasts and for the damage thereby inflicted.

I authorized Fahr-Eddin to send a cipher telegram in this sense, but pointed out to him at the same time that the representation he had made in no way altered the situation. Fahr-Eddin will receive his passports to-morrow, and the reply from the Turkish Government can be sent through the Italian Embassy.

TURKEY.

TURKEY with BELGIUM.

Notes relating to the severance of diplomatic relations with Belgium, 6 November, 1914.

[Second Belgian Gray Book, No. 62.]

M. Davignon, Minister for Foreign Affairs, to M. van Ypersele de Strihou, Belgian Minister at Bucharest.

[Telegram.]

LA HAVRE, *6 November, 1914.*

The Turkish minister has asked for his passports. Notify the Belgium minister at Constantinople either directly or through the Roumanian Government to do the same and to leave Turkey with his staff and the consular officials.

DAVIGNON.

[Second Belgian Gray Book, No. 64.]

M. Davignon, Minister for Foreign Affairs, to all the Belgian Ministers in Foreign Countries.

LA HAVRE, *9 November, 1914.*

SIR: The French Government has informed the Belgian Government of the state of war existing between France and Turkey, and in

these circumstances the presence at Havre of the Turkish minister with the Belgian Government became delicate. Understanding the situation in which he was placed by the course of events His Excellency Nousret Sadoullah Bey took the initiative by asking for his passports and by putting Turkish interests in Belgium under the protection of the minister of the Netherlands.

Under date 6 November, I sent to his excellency the passports which he had asked for, and remarked that, according to the interpretation of the Belgian Government, the rupture of diplomatic relations in no way implied a state of war between the two countries.

The Belgian minister at Constantinople has received instructions to ask for his passports and leave Turkey. The care of Belgian interests in Turkey has been entrusted to the ambassador of the United States of America.

DAVIGNON.

TURKEY with UNITED STATES.

Note severing diplomatic relations with the United States, 20 April, 1917.

[Archives of the Department of State.]

SUBLIME PORTE,
MINISTER OF FOREIGN AFFAIRS, OFFICE OF THE MINISTER,
20 April, 1917.

Mr. AMBASSADOR: The embassy of the United States of America having informed the Imperial Ministry of Foreign Affairs by its note verbale of 8 April, 1917, No. 2422, that its Government is in a state of war with the German Empire, I have the honor to inform your excellency that the Imperial Ottoman Government, ally of this Empire, is obliged to break its diplomatic relations with the Government of the United States of America beginning from to-day.

Please accept, Mr. Ambassador, the assurance of my highest esteem.

(Signed) AHMED NESSIMI.

His Excellency Mr. ELKUS,
Ambassador of the United States of America.

UNITED STATES.

UNITED STATES with GERMANY.

Note severing diplomatic relations with Germany, 3 February, 1917.

[International Law Documents, Naval War College, 1917 : 222.]

The Secretary of State to the German Ambassador.

No. 2307.

WASHINGTON, *3 February, 1917.*

EXCELLENCY: In acknowledging the note with accompanying memoranda, which you delivered into my hands on the afternoon

of 31 January, and which announced the purpose of your Government as to the future conduct of submarine warfare, I would direct your attention to the following statements appearing in the correspondence which has passed between the Government of the United States and the Imperial German Government in regard to submarine warfare.

This Government on 18 April, 1916, in presenting the case of the *Sussex*, declared—

> If it is still the purpose of the Imperial Government to prosecute relentless and indiscriminate warfare against vessels of commerce by the use of submarines without regard to what the Government of the United States must consider the sacred and indisputable rules of international law and the universally recognized dictates of humanity, the Government of the United States is at last forced to the conclusion that there is but one course it can pursue. Unless the Imperial Government should now immediately declare and effect an abandonment of its present methods of submarine warfare against passenger and freight-carrying vessels, the Government of the United States can have no choice but to sever diplomatic relations with the German Empire altogether.

In reply to the note from which the above declaration is quoted your excellency's Government stated in a note dated 4 May, 1916—

> The German Government, guided by this idea, notifies the Government of the United States that the German naval forces have received the following orders: In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law, such vessels, both within and without the area declared as naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance.
>
> But neutrals can not expect that Germany, forced to fight for her existence, shall, for the sake of neutral interests, restrict the use of an effective weapon if her enemy is permitted to continue to apply at will methods of warfare violating the rules of international law. Such a demand would be incompatible with the character of neutrality, and the German Government is convinced that the Government of the United States does not think of making such a demand, knowing that the Government of the United States has repeatedly declared that it is determined to restore the principle of the freedom of the seas, from whatever quarter it has been violated.

To this reply this Government made answer on 8 May, 1916, in the following language:

> The Government of the United States feels it necessary to state that it takes it for granted that the Imperial German Government does not intend to imply that the maintenance of its newly announced policy is in any way contingent upon the course or result of diplomatic negotiations between the Government of the United States and any other belligerent Government, notwithstanding the fact that certain passages in the Imperial Government's note of the 4th instant might appear to be susceptible of that construction. In order, however, to avoid any possible misunderstanding, the Government of the United States notifies the Imperial Government that it can not for a moment entertain, much

less discuss, a suggestion that respect by German naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made contingent upon the conduct of any other Government affecting the rights of neutrals and noncombatants. Responsibility in such matters is single, not joint; absolute, not relative.

To this Government's note of 8 May no reply was made by the Imperial Government.

In one of the memoranda accompanying the note under acknowledgment, after reciting certain alleged illegal measures adopted by Germany's enemies, this statement appears:

> The Imperial Government, therefore, does not doubt that the Government of the United States will understand the situation thus forced upon Germany by the entente allies' brutal methods of war and by their determination to destroy the central powers, and that the Government of the United States will further realize that the now openly disclosed intentions of the entente allies give back to Germany the freedom of action which she reserved in her note addressed to the Government of the United States on 4 May, 1916.
>
> Under these circumstances Germany will meet the illegal measures of her enemies by forcibly preventing, after 1 February, 1917, in a zone around Great Britain, France, Italy, and in the eastern Mediterranean all navigation, that of neutrals included, from and to England and from and to France, etc. All ships met within the zone will be sunk.

In view of this declaration, which withdraws suddenly and without prior intimation the solemn assurance given in the Imperial Government's note of 4 May, 1916, this Government has no alternative consistent with the dignity and honor of the United States but to take the course which it explicitly announced in its note of 18 April, 1916, it would take in the event that the Imperial Government did not declare and effect an abandonment of the methods of submarine warfare then employed and to which the Imperial Government now purposes again to resort.

The President has, therefore, directed me to announce to your excellency that all diplomatic relations between the United States and the German Empire are severed, and that the American ambassador at Berlin will be immediately withdrawn, and in accordance with such announcement to deliver to your excellency your passports.

I have, etc.,

ROBERT LANSING.

URUGUAY.

URUGUAY with GERMANY.

Decree severing diplomatic relations with Germany, 7 October, 1917.

[Official U. S. Bulletin, No. 128, p. 1.]

MONTEVIDEO, *7 October, 1917.*

In view of the authority granted the executive power by law of the nation of this date, authorizing said power to declare diplomatic and

commercial relations broken between Uruguay and the Imperial Government and the reasons which have caused the legislative decision which are absolutely shared by the executive power, the President of the Republic at a general cabinet meeting decrees:

ARTICLE 1. From the date of the present decree diplomatic and commercial relations between Uruguay and the German Imperial Government remain broken.

ARTICLE 2. That the respective passports be handed over to the diplomatic representative of that Government, all the guarantees for his personal safety being granted to him at the same time until his removal from the country.

ARTICLE 3. That telegraphic instruction be transmitted to the functionaries of the Republic in office in Germany to the effect that they immediately abandon the German territory, requesting the same guarantees which are granted to the German representative by the Government of Uruguay.

VIERA.

○

The
LAWS OF LAND WARFARE

CONCERNING

THE RIGHTS AND DUTIES OF BELLIGERENTS

As Existing on August 1, 1914

PREPARED BY

JOSEPH R. BAKER
and
HENRY G. CROCKER

November, 1918

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

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ABBREVIATIONS.

Amer. Journal International Law	American journal of international law. v. 1-11. 1907–1917. N. Y., Oxford university press. [Supplement. v. 1–11, 1907–1917, special numbers, 1915, 1916.]
Ariga	La Guerre Russo-Japanaise au point de vue continental et droit le international. By R. Ariga, 1908.
Austro-Hungarian Manual	Anhang zum Dienstraglement für die k. u. k. Kriegemarine (Internationales Sea—und Landkriegsrecht). Vienna, 1913.
Birkhimer	Military Government and Martial Law. By William E. Birkhimer. Third edition, 1914.
Black	Reports of cases argued and determined in the Supreme Court of the United States, December term, 1861, to December term, 1862. 2 v. (included in U. S. Reports as vols. 66 and 67).
Bonfils	Manual de droit international public . . . By Henry Bonfils. Seventh edition . . . By Paul Fauchille. Paris, 1914.
British F. S. R.	Field Service Regulations. Part 1. Operations. 1909. (Reprinted, with Amendments, 1914.) General Staff, War Office. London.
Brussels	The Declaration of Brussels, 1874.
Cranch	U. S. Supreme Court Reports, 5–13. U. S. 1801–1815.
Ct. Cl.	Cases decided in the Court of Claims of the United States.
Dall.	Reports of cases in the courts of the United States [1790–1800] and Pennsylvania [1754–1806].
Edmonds and Oppenheim	Land Warfare. An exposition of the laws and usages of war on land, for the guidance of officers in His Majesty's army. By Col. J. E. Edmonds and L. Oppenheim, London. Also appears as Chapter XIV of the Manual of Military Law. War Office, 1914.
Fed. Cases	Federal Cases. Comprising cases argued and determined in the circuit and district courts of the United States. 1894.
Field	Outlines of an International Code. By David Dudley Field. 2d edition. New York and London, 1876.
For. Relations	Foreign Relations of the United States.
Gallison	Reports, Circuit Court United States, First Circuit, 1812–1815, Boston, 1845, 2 vols.
Geneva Convention, 1868	International Red Cross convention, concluded at Geneva, October 20, 1868. Treaties, etc., of U.S., p. 1907.
Geneva Convention, 1906	International Red Cross convention, concluded at Geneva, July 6, 1906. Treaties, etc., of U. S., p. 2183.
German F. S. R.	Field Service Regulations (Felddienst Ordnung, 1908) of the Germany Army. 1908. Translated by the General Staff, War Office. London.
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Hall	W. E. Hall: A treatise on international law. Fourth edition. Oxford, 1895.
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Higgins	Higgins, Alexander Pearce: Hague peace conference and other international conferences concerning the laws and usages of war; texts of conventions, with commentaries. N. Y., Putnam, 1909.
Holland	The Laws of War on Land. By Thomas Erskine Holland, Oxford, 1906.
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Jacomet	Les Louis de la Guerre Continentale. Lieut. Robert Jacomet. Préface de M. Louis Renault. Publié nous la Direction de la Section historique de l'Etat-Major de l'Armée. Fourth edition, Paris, 1913.
Kent	James Kent: Commentaries on American law. Thirteenth edition, edited by Charles M. Barnes. Boston, 1884.
Lawrence	T. J. Lawrence: The principles of international law. Fifth edition. Boston, 1913.
Lawrence, War and Neutrality in the Far East.	Lawrence, Thomas Joseph: War and neutrality in the Far East. London, New York, etc., Macmillan, 1904.
Lieber	Instructions for the Government of the Armies of the United States in the Field, 1863.
Moore's Digest	A Digest of International Law. By J. B. Moore, Washington, 1906.
Moore's International Arbitrations	History and Digest of the International Arbitrations to which the United States has been a party. Washington, 1898. 6 vols.
Op. Atty. Gen	Official Opinions of the Attorney General of the United States, 1789. 1852.
Oppenheim	L. Oppenheim: International law. Vol. II. War and neutrality. Second edition. London, 1912.
Peters	Cases in the Supreme Court of the United States, 1828–1842. 16 vols.
Reports to the Hague Conferences	Reports to the Hague conferences of 1899 and 1907 . . . Oxford, Clarendon press, 1917. At head of title: Carnegie endowment for international peace.
Russian Instructions	Procedure in Stopping, Examining, etc., Sept. 20. 1900 (Br. & For. State Papers, vol. 24, pp. 882–893.
Scott	Scott, James Brown: Cases on international law . . . St. Paul, West pub. co., 1906. 961 p.
Spaight	War Rights on Land. By J. M. Spaight. London, 1911.
Spinks Prize Cases	Prize Cases. Reports of cases in the Admiralty prize court and the court of appeal. London. 1856.
Swiss Manual	Conventions internationales concernant la guerre sur terre. Publiées ensuite de décision du Conseil fédéral du 21 octobre, 1910.
Takahashi	Takahashi, Sakyuei: International law applied to the Russo-Japanese War, with the decisions of the Japanese prize courts. (American edition.) New York, Banks law pub. co., 1908. 805 p.

Treaties, etc., of U. S.—Malloy	U. S. Treaties, etc. Treaties, conventions, international acts, protocols, and agreements between the United States of America and other powers. Compiled by William M. Malloy, under resolution of the Senate of January 18, 1909 (Res. No. 22, Sixtieth Congress, second session). Wash., Govt. Printing Office, 1910. 2 v. (61st Cong., 2d session, Senate Doc. 357.)
Twiss, Law of Nations	Twiss, *Sir* Travers: Law of nations considered as independent political communities . . . 2d ed. revised. Oxford, Clarendon press, 1875. 2 v.
U. S	U. S. Supreme Court Reports.
U. S. Manual	Rules of land warfare. War Department, Document 467, office of the Chief of Staff. Washington, 1914.
Wall	Cases in the Supreme Court of the United States, 1863–1874. 23 vols.
Westlake	John Westlake: International Law, Part II, War. Second edition. Cambridge, 1913.
Wheat	Cases in the Supreme Court of the United States, 12 vols.
Dana's Wheaton	Henry Wheaton: Elements of International law. Eighth edition, edited with notes by Richard Henry Dana. Boston, 1866.
Woolsey	Theodore Dwight Woolsey: Introduction to the Study of International Law. Sixth edition. Revised by Theodore Salisbury Woolsey. New York, 1908.

THE LAWS OF LAND WARFARE.

HAGUE CONVENTION IV, 1907.

Convention (IV) respecting the laws and customs of war on land.—*Signed at The Hague, October 18, 1907.*

His Majesty the German Emperor, King of Prussia; [etc.]:

Seeing that, while seeking means to preserve peace and prevent armed conflicts between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought about by events which their care was unable to avert;

Animated by the desire to serve, even in this extreme case, the interests of humanity and the ever progressive needs of civilization;

Thinking it important, with this object, to revise the general laws and customs of war, either with a view to defining them with greater precision or to confining them within such limits as would mitigate their severity as far as possible;

Have deemed it necessary to complete and explain in certain particulars the work of the First Peace Conference, which, following on the Brussels Conference of 1874, and inspired by the ideas dictated by a wise and generous forethought, adopted provisions intended to define and govern the usages of war on land.

According to the views of the high contracting Parties, these provisions, the wording of which has been inspired by the desire to diminish the evils of war, as far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants.

It has not, however, been found possible at present to concert regulations covering all the circumstances which arise in practice;

On the other hand, the high contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written undertaking, be left to the arbitrary judgment of military commanders.

Until a more complete code of the laws of war has been issued, the high contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

The high contracting Parties, wishing to conclude a fresh Convention to this effect, have appointed the following as their plenipotentiaries:

[Here follow the names of plenipotentiaries.]

Who, after having deposited their full powers, found in good and due form, have agreed upon the following:

ARTICLE 1

The contracting Powers shall issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention.

ARTICLE 2

The provisions contained in the Regulations referred to in Article 1, as well as in the present Convention, do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.

ARTICLE 3

A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

ARTICLE 4

The present Convention, duly ratified, shall as between the contracting Powers, be substituted for the Convention of the 29th July, 1899, respecting the laws and customs of war on land.

The Convention of 1899 remains in force as between the Powers which signed it, and which do not also ratify the present Convention.

ARTICLE 5

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at The Hague.

The first deposit of ratifications shall be recorded in a procès-verbal signed by the Representatives of the Powers which take part therein and by the Netherland Minister for Foreign Affairs.

The subsequent deposits of ratifications shall be made by means of a written notification, addressed to the Netherland Government and accompanied by the instrument of ratification.

A duly certified copy of the procès-verbal relative to the first deposit of ratifications, of the notifications mentioned in the pre-

be immediately sent by the Netherland Government, through the diplomatic channel, to the Powers invited to the Second Peace Conference, as well as to the other Powers which have adhered to the Convention. In the cases contemplated in the preceding paragraph the said Government shall at the same time inform them of the date on which it received the notification.

ARTICLE 6

Non-signatory Powers may adhere to the present Convention.

The Power which desires to adhere notifies in writing its intention to the Netherland Government, forwarding to it the act of adhesion, which shall be deposited in the archives of the said Government.

This Government shall at once transmit to all the other Powers a duly certified copy of the notification as well as of the act of adhesion, mentioning the date on which it received the notification.

ARTICLE 7

The present Convention shall come into force, in the case of the Powers which were a party to the first deposit of ratifications, sixty days after the date of the procès-verbal of this deposit, and, in the case of the Powers which ratify subsequently or which adhere, sixty days after the notification of their ratification or of their adhesion has been received by the Netherland Government.

ARTICLE 8

In the event of one of the contracting Powers wishing to denounce the present Convention, the denunciation shall be notified in writing to the Netherland Government, which shall at once communicate a duly certified copy of the notification to all the other Powers, informing them of the date on which it was received.

The denunciation shall only have effect in regard to the notifying Power, and one year after the notification has reached the Netherland Government.

ARTICLE 9

A register kept by the Netherland Ministry for Foreign Affairs shall give the date of the deposit of ratifications made in virtue of Article 5, paragraphs 3 and 4, as well as the date on which the notifications of adhesion (Article 6, paragraph 2), or of denunciation (Article 8, paragraph 1) were received.

Each contracting Power is entitled to have access to this register and to be supplied with duly certified extracts.

In faith whereof the plenipotentiaries have appended their signatures to the present Convention.

Done at The Hague, the 18th October, 1907, in a single copy, which shall remain deposited in the archives of the Netherland Government, and duly certified copies of which shall be sent, through the diplomatic channel, to the Powers which have been invited to the Second Peace Conference.

[Here follow signatures.]

Indemnification for violation of Regulations.

To the amendments proposed to the Regulations of 1899, within the scope of the programme of the first subcommission, there was added a new proposition by the German delegation.

Indemnification for violation of the Hague Regulations respecting the laws and customs of war on land.

ARTICLE 1. A belligerent party which shall violate the provisions of these Regulations to the prejudice of neutral persons shall be liable to indemnify those persons for the wrong done them. It shall be responsible for all acts committed by persons forming part of its armed forces. The estimation of the damage caused and the indemnity to be paid, unless immediate indemnification in cash has been provided, may be postponed, if the belligerent party considers that such estimate is incompatible, for the time being, with military operations.

ARTICLE 2. In case of violation to the prejudice of the hostile party, the question of indemnity will be settled at the conclusion of peace.

This interesting proposition was calculated to give a sanction to the requirements laid down by the First Peace Conference, which it is the duty of the second commission to complete and make precise. As the provisions of the Regulations respecting the laws and customs of war must be observed not only by the commanders of belligerent armies but, in general, by all officers, commissioned and non-commissioned, and soldiers, the German delegation thought it well to propose that the Convention should extend to the law of nations, in all cases of infraction of the Regulations, the principle of private law according to which the master is responsible for his subordinates or agents.

The principle of the German proposition did not meet with objection. But a discussion occurred on the subject of the distinction it made between the populations of belligerent States and those of neutral States. In both cases, it was said, there is a violation of rights and, at least as a rule, the reparation should be the same. Now, with respect to the former, the text proposed limits itself to saying that the 'questions' concerning them must be settled when peace is arranged; therefore, no right is recognized in them. The military delegate of Germany declared that he by no means intended to make any difference in legal right between 'neutral persons' and 'persons of the hostile party,' the text proposed having no other purpose than to regulate the method of paying the indemnities. There had therefore been a misunderstanding. The committee came to the conclusion that it was best to retain only the first part of the proposition and to give it the following form:

A belligerent party which shall violate the provisions of the present Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces. This draft was concurred in by the German delegation, and met with no opposition in the Commission, although the British delegation felt that it ought to make reservations on the subject.

The Commission has left to the drafting committee the work of assigning a place for this article, in the event that the Conference definitely decides to adopt it.

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," pp. 528, 529.

History of rules of Land Warfare.

The rules for the conduct of hostilities on land are still in many cases to be sought for in historical treatises, the writings of publicists, and from "unwritten custom and tradition; but within the last forty years, attempts of two kinds have been made to deal with the topic in a more authoritative manner." National manuals have been compiled for the use of officers and armies in the field, and international Conventions have produced something like a Code of law which is almost universally accepted.

The starting point for the codification of the rules of war on land is the "Instructions for the government of armies of the United States in the field" drawn up by Dr. Francis Lieber and revised by a board of officers of the United States Army at the instance of President Lincoln and issued from the office of the Adjutant-General to the Army as General Order, No. 100, of 1863. It was "a deed of great moment in the history of international law and of civilization," and although Dr. Lieber's expectation that it would be adopted as a "basis for similar works by the English, French and Germans" was not fully realized, its influence is to be seen in the attempts which ultimately were successful in 1899 in producing a Code acceptable to nearly all the members of the family of nations.

The horror at the treatment to which prisoners of war had in some cases been subjected during the American Civil War, had led to the formation in France, in 1872, of a society for the amelioration of the condition of prisoners of war. In 1874 this society invited the Powers of Europe to send two delegates to a Conference to be held at Paris to endeavor to carry out their objects. Meantime the Tsar, Alexander II, proposed a Conference to consider the wider and more general question of the conduct of war. The first meeting of the Conference was held on the 27th July, 1874, at Brussels, and was attended by delegates of Austria, Belgium, France, Germany, Great Britain, Greece, Italy, the Netherlands, Russia, Spain, Switzerland and Sweden. The Portuguese and Turkish delegates attended the later meetings of the Conference, but did not arrive in time to take part in the earlier meetings.

The Russian Plenipotentiary, Baron Jomini, was elected President. With the circular addressed to the Powers by the Tsar was enclosed a draft project for the consideration of the Conference, and this was taken as a basis. Dr Bluntschli, one of the German delegates, filled the post of Chairman of the Committee on Codification, and in preparing the final draft, considerable use was made of Dr.

Lieber's "Instructions." The Conference terminated its labors on the 27th August, 1874, and the delegates signed the *Projet de Déclaration* merely as a record of the proceedings and without pledging their Governments. The Declaration was never ratified. Many causes have been assigned for this failure; among others, the British Government declined to accept the Declaration on the ground that the Articles contained many innovations, while Germany saw in some of its rules, a condemnation of her recent practices in the conduct of the Franco-German war. The Conference was held too soon after this war "which probably never had a rival in the violence of the passions which it excited." The sections on the occupation of belligerent territory, and the definition of combatants (especially Articles 9 and 10), were fought most keenly, the contest being chiefly between the great military Powers and the smaller ones. Though never forming part of international law, the Declaration has nevertheless had considerable influence, which is reflected in many of the Manuals prepared for the use of armies in the field. But what is even more important, it formed the basis of the "Regulations concerning the laws and customs of war on land" adopted as the annex to the Second Convention of the Hague Conference 1899.

The Circular of Count Mouravieff of 11th January, 1899, enumerated among the subjects for consideration by the Conference "the Declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, which has remained unratified to the present day." The Brussels Declaration was considered by the Second Sub-Commission of the Second Commission under the presidency of M. de Martens and after a prolonged examination and considerable protests, especially on the part of some of the smaller states, particularly as regards Articles 9, 10 and 11 of the Declaration, the Convention concerning the laws and customs of war on land was agreed to. M. de Martens' appeal to the Committee at the meeting on the 6th June, 1899, was a masterly summary of the reasons for the acceptance by the Powers of a set of rules for land warfare. He said that if their attempt was again to be unsuccessful the result would be fatal and disastrous in the highest degree to the whole of their work, for belligerent governments and their generals would say, "Twice, in 1874 and 1899, two great International Conferences composed of the most competent and eminent men in the civilized world in this matter have met. They have not been able to determine the laws and customs of war. They have separated, leaving in absolute vagueness all these questions. These eminent men, in discussing these questions of occupation and the rights and duties over invaded territories, have found no solution but to leave everything vague and within the domain of the law of nations. How shall we, the Commanders-in-Chief of armies, we who are in the midst of action, find time to settle these disputes when they have been unable to do so in time of peace, when a profound calm reigned in the whole world, and when Governments had met to lay the solid foundation for a common life of peace and concord." At the meeting on the 10th June, Sir John Ardagh on behalf of Great Britain said that in order to avoid a fruitless result of the Conference, it was better to accept the Declaration as a general basis for the instruction of the troops in the laws and customs of war without any express engagement to accept all the

"In order to clearly express what is, in the view of the Russian Government, the object of this Conference in this matter, I can not find a better illustration than that of a 'Mutual Insurance Society against the abuse of force in time of war.' Well, gentlemen, one is free to participate or not in a Society, but for its existence Statutes are necessary. In such Insurance Societies as those against fire, hail, or other calamities the Statutes which anticipate such disasters do not legalise them, but state existing dangers. So it is that in founding by common agreement the 'Society against the abuse of force in time of war' with the object of safeguarding the interests of populations against the greatest disasters, we do not legalise the disasters: we only state them. It is not against the necessities of war, it is solely against the abuse of force that we wish to provide a guarantee."

These explanations appear to provide a sufficient reason for the unique character of the Conventions both of 1899 and 1907. Unlike the others, this Convention does not embody the rules of war to be observed by the belligerents, but a detached *Règlement* contains rules "suitable for communication, disencumbered of alien matter, to troops and others, who have no concern with the mechanism of diplomacy."

The object of the Convention is set forth in the preamble, namely "to revise the laws and general customs of war, either with the view of defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible." The wording of these provisions was "inspired by the desire to diminish the evils of war so far as military necessities permit" and the Regulations "are intended to serve as general rules of conduct for belligerents in their relations with each other and with populations." The *Règlement* is admittedly incomplete, and the "high contracting Parties think it right to declare that in cases not included in the regulations adopted by them, populations and belligerents remain under the protection and the rules of the principles of the law of nations, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience." It is in this sense, especially, that Articles 1 and 2 of the Règlement over which so much controversy took place, are to be understood. By the Convention (Art. 1) the Parties agree to issue to their armed land forces instructions which shall be in conformity with the "Regulations respecting the laws and customs of war on land" annexed to the Convention. The Regulations are therefore to form the basis of the instructions to be issued to the troops, but it was open to doubt whether they had the same literal binding force as if they had been embodied in a Convention, though the Convention binds the signatory Powers to an essential observance of all these rules.

The Convention of 1899 contained five articles, that of 1907 contains nine. The change in Article 3 (1907) is important, a sanction is now provided for the Regulations. "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." This would appear to determine the obligatory character of the Regulations. This proposition was introduced by the German delegate, but as originally presented it made a distinction between the popu-

lations of belligerent states and neutral persons which appeared to be to the advantage of the latter, but the Conference recognized that in both cases there was a breach of law and that consequently reparation should as a rule be the same. It will be noticed that it is the government, and not the individual wrongdoer from whom reparation is to be demanded. The German draft fixed the time and mode of the settlement; in the case of violations of the laws of war as against a belligerent the settlement of the question was to be postponed until the conclusion of the war, but in the case of injuries to a neutral, the necessary measures were to be taken to assure the promptest reparation compatible with military necessities.

The other changes in the convention are in reference to the arrangements for accession and denunciation, and are in accordance with the scheme adopted in most of the other Conventions.

Higgins, pp. 256–261.

MILITIA AND VOLUNTEER CORPS, STATUS OF.

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. **To be commanded by a person responsible for his subordinates;**
2. **To have a fixed distinctive emblem recognizable at a distance;**
3. **To carry arms openly; and**
4. **To conduct their operations in accordance with the laws and customs of war.**

In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination 'army.'[1]—*Article 1, Regulations, Hague Convention IV, 1907.*

The two first articles of this chapter (Articles 1 and 2) were voted unanimously and are word for word the same as Articles 9 and 10 of the Brussels Declaration, with the exception of a purely formal addition to the final paragraph of the first article made on the second reading, in order to include *volunteer corps* as well as *militia* within the term *army*.

When these articles were first submitted to discussion, Mr. Martens read the declaration already spoken of and the subcommission immediately adopted it for submission to the Conference. Its text follows:

The Conference is unanimous in thinking that it is extremely desirable that the usages of war should be defined and regulated. In this spirit it has adopted a great number of provisions which have for their object the determination of the rights and of the duties of belligerents and populations and for their end a softening of the evils of war so far as military necessities permit. It has not, however, been possible to agree forthwith on provisions embracing all the cases which occur in practice.

On the other hand, it could not be intended by the Conference that the cases not provided for should, for want of a written provision, be left to the arbitrary judgment of the military commanders.

Until a perfectly complete code of the laws of war is issued, the Conference thinks it right to declare that in cases not included in the present arrangement, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.

It is in this sense especially that Articles 9 and 10 adopted by the Conference must be understood.

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[1] This article is identical with Article 1, Regulations, Hague Convention II, 1899.

The senior delegate from Belgium, Mr. Beernaert, who had previously objected to the adoption of Articles 9 and 10 (1 and 2 of the new draft), immediately announced that he could because of this declaration vote for them.

Unanimity was thus obtained on those very important and delicate provisions relating to the fixing of the qualifications of belligerents.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," pp. 140, 141.

For the purpose of lessening the evils of war, the two high contracting parties further agree that, in case a war should unfortunately take place between them, hostilities shall only be carried on by persons duly commissioned by the Government, and by those under their orders, except in repelling an attack or invasion, and in the defense of property.

Treaty of Peace, Amity, Navigation, and Commerce between the United States and Colombia (New Granada), concluded December 12, 1846, Article XXV.

Every belligerent armed force is bound to conform to the laws of war.

Institute, 1880, p. 28.

The armed force of a State includes:

1. The army properly so-called, including the militia;

2. The national guards, landsturm, free corps, and other bodies which fulfill the three following conditions:

(*a*) That they are under the direction of a responsible chief.

(*b*) That they must have a uniform, or a fixed distinctive emblem recognizable at a distance, and worn by individuals composing such corps;

(*c*) That they carry arms openly;

3. The crews of men of war and other military boats;

4. * * *

Institute, 1880, p. 28.

Barbarian soldiers.

It is not a valid objection that individual soldiers are of a barbarian race or pagan religion, when they are subjected to the articles of war, and under the responsible command of officers of a civilized nation.

Dana's Wheaton, note 166, par. II.

The effect of a state of war, lawfully declared to exist, is to place all subjects of each belligerent power in a state of mutual hostility. The usage of nations has modified this maxim, by legalizing such acts of hostility only as are committed by those who are authorized by the express or implied command of the State. Such are the regularly commissioned naval and military forces of the nation, and all others called out in its defence, or spontaneously defending themselves in case of urgent necessity, without any express authority for that purpose. Cicero tells us, in his *Offices*, that by the Roman fecial law no person could lawfully engage in battle with the public enemy, without being regularly enrolled and taking the military oath. This was a

regulation sanctioned both by policy and religion. The horrors of war would indeed be greatly aggravated, if every individual of the belligerent States was allowed to plunder and slay indiscriminately the enemy's subjects, without being in any manner accountable for his conduct. Hence it is that in land wars, irregular bands of marauders are liable to be treated as lawless banditti, not entitled to the protection of the mitigated usages of war as practised by civilized nations.

Dana's Wheaton, pp. 451, 452.

If each and all on the one side were enemies to each and all on the other, it would seem that every person had a right, so far as the municipal code did not forbid, to fall upon his enemy wherever he could find him; that, for instance, an invading army had a right to seize on all the property and persons within reach, and dispose of them at discretion. But no such unlimited enmity is now known in the usages of nations. It is to be hoped that the theory from which such consequences flow will be abandoned and disappear altogether. The true theory seems to be that the private persons on each side are not fully in hostile relations, but in a state of nonintercourse, in a state wherein the rights of intercourse, only secured by treaty and not derived from natural right, are suspended or have ceased; while the political bodies to which they belong are at war with one another, and they only. Of course until these political bodies allow hostile acts to be performed, such acts, save in self-defense, may not be performed; and accordingly the usages of war visit with severity those who fight without a sanction from their governments. The plunder which such persons seize belongs not to themselves but to the public, until public authority gives them a share in it.

Woolsey, p. 199.

On the land, in addition to standing armies, a militia and volunteers, often commanded by regular officers, have been employed in carrying on war, especially in national defense. As the different military corps are frequently united in their operations, and no great harm can be done by the less disciplined if under proper officers; to employ a militia or volunteers can furnish no just ground for complaint [if properly officered and so uniformed or marked as to be recognizable at a distance].

Woolsey, p. 201.

Use of barbarians.

Hitherto the practice of using barbarians in the wars of Christian nations with one another, has not been absolutely condemned by the law of nations. The French used the American Indians against the English in America, and the Turcos, a force made up of Algerines, Kabyles, and Negroes, in Italy; the English employed savages against their revolted colonies, in spite of the rebukes of Lord Chatham; and the Russians brought Circassians with them into Hungary in the war following 1848. [The test in such cases is, are these half civilized or savage troops so officered and under such control as to ensure their conformity to the rules and usages of modern warfare.]

Woolsey, p. 213.

The treatment which the milder modern usage prescribes for regular soldiers is extended also to militia called out by public authority. Guerilla parties, however, do not enjoy the full benefit of the laws of war. They are apt to fare worse than either regular troops or an unarmed peasantry. The reasons for this are, that they are annoying and insidious, that they put on and off with ease the character of a soldier, and that they are prone, themselves, to treat their enemies who fall into their hands with great severity.

Woolsey, p. 216.

"It is necessary, in order to place the members of an army under the protection of the law of nations, that it should be commissioned by a state. If war were to be waged by private parties, operating according to the whims of individual leaders, every place that was seized would be sacked and outraged; and war would be the pretence to satiate private greed and spite. Hence, all civilized nations have agreed in the position that war to be a defence to an indictment for homicide or other wrong, must be conducted by a belligerent state, and that it can not avail voluntary combatants not acting under the commission of a belligerent. But freebooters, or detached bodies of volunteers, acting in subordination to a general system, if they wear a distinctive uniform, are to be regarded as soldiers of a belligerent army. Mr. Field, in his proposed code, thus speaks: 'The following persons, and no others, are deemed to be impressed with the military character: (1) Those who constitute a part of the military forces of the nation; and (2) those who are connected with the operations thereof, by the express authority of the nation.' This was accorded to the partisans of Marion and Sumter in the American Revolution, they being treated as belligerents by Lord Rawdon and Lord Cornwallis, who were in successive command of the British forces in South Carolina; by Napoleon to the German independent volunteers in the later Napoleonic campaigns; and by the Austrians, at the time of the uprising of Italy, to the forces of Garibaldi. (Lawrence's Wheaton's Elem. of Int. Law, 627, pt. iv, chap. ii, §8; Dana's Wheaton, § 356; Bluntschli, Droit Int. Codifié, § 569, cited by Field, *ut supra.*) There must, however, be a military uniform, and this test was insisted on by the Government of the United States in its articles of war issued in 1863, and by the German Government in its occupation of France in 1871. The same privileges attach to subsidiary forces, camp followers, etc. But ununiformed predatory guerilla bands are regarded as outlaws, and may be punished by a belligerent as robbers and murderers. (Halleck's Int. Law and Laws of War, 386, 387; Heffter, Droit Int. §126; 3 Phillimore's Int. Law, §96; Lieber's Instructions for the Government of Armies of the United States, §iv.) But if employed by the nation, they become part of its forces. (Halleck, 386, §8; adopted by Field, *ut supra.*)"

Moore's Digest, vol. 7, pp. 175, 176, quoting Wharton, Com. Am. Law, sec. 221.

In 1870 the Germans issued a proclamation under which French combatants, not possessing the distinguishing marks considered by their enemy to be necessary, were to be liable to the penalty of death, and in cases in which it was not inflicted were to be condemned to penal servitude for ten years, and to be kept in Germany until the

expiration of the sentence. The whole question by what kind of marks combatants should be indicated, and to what degree such marks should be conspicuous, was at the time an open one; if inadequate marks were used, they would be used in the vast majority of instances under the direction or permission of the national authorities; and the individual would as a rule be innocent of any intention to violate the laws of war. If the marks sanctioned by the French government were glaringly insufficient, there might be good reason for executing a few members of its irregular forces or for condemning some to penal servitude until the end of the war. But measures of this kind ought only to be threatened when disregard of the laws of war on the part of an enemy is clear; they ought only to be carried out in the last extremity; and it can never be legitimate to inflict a penalty extending beyond the duration of the war. To do so is to convert a deterrent into a punishment for crime; and in such cases as that in question a crime can not be committed by the individual so long as he keeps within the range of acts by his government. The case of individuals who outstep this range is of course a wholly different one.

Hall, pp. 431, 432.

Much attention was directed to the subject during the Franco-German war of 1870–1; and the occurrences which then happened, together with the discussions which took place at the conference of Brussels, render it possible to come to a fair conclusion as to the characteristics which ought now to be accepted as entitling a force to be recognized as belligerent. In the course of the war bodies of irregulars called Francs Tireurs were formed in France, who acted independently, without a military officer at their head, and who were distinguished in respect of dress only by a blue blouse, a badge, and sometimes a cap. The Germans refused to consider them legitimate belligerents on the double ground that they were not embodied as part of the regular forces of the state, viz. as part of the army or of the Garde Mobile, and that the distinguishing marks on the dress were insufficient or removable. The blouse, it was said, was the common dress of the population, and the badge and cap could be taken off and hidden at will. It was demanded that the marks should be irremovable and distinguishable at rifle distance. Where bodies of men are small, are acting independently, and especially if they are not under the immediate orders either of a military officer or of a local notability, such as a mayor in certain countries, an administrative official of sufficient rank, or a landed proprietor of position, they depend solely upon their dress marks for their right to belligerent privileges, since it is solely through them that the enemy can ascertain their quality. It is clear therefore that such marks must be irremovable; but to ask for marks distinguishable at a long distance is to ask not only for a complete uniform, but for a conspicuous one. The essential points are that a man shall not be able to sink into the class of non-combatants at his convenience, and that when taken prisoner there shall be no doubt on the patent facts how he ought to be dealt with. For both these purposes irremovable marks, clearly distinguishable at a short distance, are amply sufficient. The question whether irregular levies must be

under the general military command, whether in fact, as a matter not of authorization but of the sufficiency of the guarantees which it can offer for proper behaviour, a population has the right of spontaneous action in a moment of opportunity or emergency, was discussed at the Conference of Brussels. In the original draft Project of Convention it was made a condition of the possession of combatant rights that the persons claiming to have them should be under such command, and the representative of Germany showed a strong desire to maintain the requirement. After a good deal of discussion however the paragraph containing the condition was modified, and though the powers represented at Brussels are not legally bound by the terms of the draft Declaration as ultimately settled, it would be difficult for the great military states to ignore the admissions made on their behalf, and to refuse to acknowledge bodies of men headed by any responsible person as being combatant, irrespectively of connexion with the general military command, provided that, as a body, they conform to the rules of war, and that if in small numbers they are distinguishable by sufficient marks. If in large numbers the case is different. Large bodies, which do not possess the full marks of a militia, must belong to one of two categories. They must either form part of the permanent forces of a state, which from poverty or some other reason is unable to place them in the field properly uniformed, or perhaps officered, as in the instance of the Norwegian Landstrum, to which attention was directed at Brussels, by the Swedish representative; or else they must consist in a part of the unorganized population rising in arms spontaneously or otherwise in face of the invader. In neither case are dress marks required. In the first the dependence on military command is immediate, and affords sufficient guarantees. In the second, dress marks are from the nature of the case impossible; and to insist upon them would be to nullify the concession which, as was seen in the last section, the military powers are ready to make, if the conclusions arrived at in the Brussels Conference can be taken to any degree as indicating their views. Dress marks in the particular case are besides unnecessary. The fact that a large body is operating together sufficiently separates it as a mass from the non-combatant classes, and there can be no difficulty in supplying the individual members with certificates which would prove their combatant quality when captured singly or in small detachments. The possession of belligerent privilege in such cases hinges upon subordination to a responsible person, who by his local prominence, coupled with the fact that he is obeyed by a large force, shows that he can cause the laws of war to be observed, and that he can punish isolated infractions of them if necessary.

Hall, pp. 543–546.

The object of requirement No. 2 is to draw a distinct line between combatants and peaceful inhabitants, by insisting that the former shall wear something in the nature of a uniform, which cannot readily be put on or taken off. This requirement, under the special circumstances of the case, was not insisted on during the war in South Africa.

Holland, p. 20.

Inhabitants of fortified towns.

J. S. Risley, *The Law of War* (1897), p. 117, holds that "the inhabitants of fortified towns are so closely associated with the garrison that they are considered to have lost their non-combatant character."

Spaight, p. 47, note.

Inhabitants of besieged towns.

Before I come to the Brussels Conference, I must mention one case in which the strict war right regarding resistance by non-military citizens is waived under a general usage. This is the case of a regular siege or bombardment of a fortified town. A commander who has forced a garrison to capitulate, does not usually punish the inhabitants for joining in the defence, though he is not bound by any Convention to show such leniency. Indeed, as will appear later, the civil inhabitants of a beleagured town are now given certain privileges, such as notification of a bombardment (except in a surprise attack), and in some cases permission to leave the fortress; and it is also usual for humane commanders to avoid deliberately shelling the residential parts of a bombarded town. In return for these special privileges, the inhabitants ought in equity to abstain from taking part in the defence. But many another siege besides that of Saragossa has been prolonged through the mingling of citizens with soldiers in the trenches or on the bastions, and a magnanimous victor is usually disposed to let the general surrender serve as an act of indemnity and oblivion for such irregular resistance. It was so at the last siege of Port Arthur. Professor Ariga says, "We captured many workmen who participated in the defence of the forts and we did not shoot them." At Kars the white-turbaned townsmen helped the Turkish Troops under Colonel Williams, the English commandant, and in the repulse of the great Russian assault of 29th September, 1855, 101 of these townspeople fell in battle. But when Williams capitulated to Mouravieff, the latter granted full protection to all the inhabitants without exception. In Osman Pasha's heroic defence of Plevna in 1877, the inhabitants of the town and district were armed and fought in the trenches without incurring any punishment from the Russian commander after Osman's capitulation.

Spaight, p. 46; Ariga, p. 90.

Distinctive emblems.

The delegates of Norway and Sweden had pointed out that the Norwegian Landsturm did not wear a full uniform. But the sign must be fixed—externally, so as not to be assumed or concealed at will.

At the Hague Conference of 1907, Germany proposed that notification of the distinctive emblem should be provided for, but the proposal was defeated in committee.

At what distance should the sign be recognisable? The German authorities demanded in 1870 that the French irregulars should be distinguishable at rifle range. This, says an eminent English jurist, is "to ask not only for a complete uniform but for a conspicuous one." When rifles are sighted to 2,000 yards and over, the German requirement is clearly unreasonable. If the sign is recognisable at

the distance at which the naked eye can distinguish the form and colour of a person's dress, all reasonable requirements appear to be met. At the commencement of the Russo-Japanese War, the Russian Government addressed a Note to Tokio, stating that Russia had approved the formation of certain free corps composed of Russian subjects in the seat of war, and that these corps would wear no uniform but only a distinctive sign on the cap or sleeve. Japan replied:—

The Japanese Government cannot consider as belligerents the free corps mentioned in the Russian Note, unless they can be *distinguishable by the naked eye from the ordinary people* or fulfil the conditions required for militia or volunteers by the Hague *Règlement.*

"Volunteers" is intended to cover "free corps" (*les corps francs*).

Spaight, p. 57; Hall p. 523; Ariga, pp. 85, 86.

Militia and volunteer corps.

The chief part of the armed forces of the belligerents are their regular armies and navies. What kinds of forces constitute a regular army and a regular navy is not for International Law to determine, but a matter of Municipal Law exclusively. Whether or not so-called Militia and Volunteer corps belong to armies rests entirely with the Municipal Law of the belligerents. There are several States whose armies consist of Militia and Volunteer Corps exclusively, no standing army being provided for. The Hague Regulations expressly stipulate in article 1 that in countries where Militia or Volunteer Corps constitute the army or form part of it they are included under the denomination "Army." It is likewise irrelevant to consider the composition of a regular army, whether it is based on conscription or not, whether natives only or foreigners also are enrolled, and the like.

Oppenheim, vol. 2, p. 94.

Irregular forces.

Very often the armed forces of belligerents consist throughout the war of their regular armies only, but, on the other hand, it happens frequently that irregular forces take part in the war. Of such irregular forces there are two different kinds to be distinguished—first, such as are authorised by the belligerents; and, secondly, such as are acting on their own initiative and their own account without special authorisation. Formerly it was a recognised rule of International Law that only the members of authorised irregular forces enjoyed the privileges due to the members of the armed forces of belligerents, whereas members of unauthorised irregular forces were considered to be war criminals and could be shot when captured. During the Franco-German war in 1870 the Germans acted throughout according to this rule with regard to the so-called "Franctireurs," requesting the production of a special authorisation from the French Government from every irregular combatant they captured, failing which he was shot. But according to article 1 of the Hague Regulations this rule is now obsolete, and its place is taken by the rule that irregulars enjoy the privileges due to members of the armed forces of the belligerents, although they do not act under authorisation, provided (1) that they are commanded by a person responsible for his

subordinates, (2) that they have a fixed distinctive emblem recognisable at a distance, (3) that they carry arms openly, and (4) that they conduct their operations in accordance with the laws and customs of war. It must, however, be emphasised that this rule applies only to irregulars fighting in bodies, however small. Such individuals as take up arms or commit hostile acts singly and severally are still liable to be treated as war criminals, and shot.

Oppenheim, vol. 2, p. 96.

Guerilla tactics during war distinguished from guerilla war.

Guerilla war must not be confounded with guerilla tactics during a war. It happens during war that the commanders send small bodies of soldiers wearing their uniform to the rear of the enemy for the purpose of destroying bridges and railways, cutting off communications and supplies, attacking convoys, intercepting despatches, and the like. This is in every way legal, and the members of such bodies, when captured, enjoy the treatment due to enemy soldiers. If happens, further, that hitherto private individuals who did not take part in the armed contention take up arms and devote themselves mainly to similar tactics. According to the former rules of International Law such individuals, when captured, under no condition enjoyed the treatment due to enemy soldiers, but could be treated as criminals, and punished with death. According to article 1 of the Regulations concerning war on land adopted by the Hague Conferences of 1899 and 1907 such guerilla fighters enjoy the treatment of soldiers under the four conditions that they (1) do not act individually, but form a body commanded by a person responsible for his subordinates, (2) have a fixed distinctive emblem recognisable at a distance, (3) carry arms openly, and (4) conduct their operations in accordance with the laws of war.

On the other hand, one speaks of guerilla war or petty war when, after the defeat and the capture of the main part of the enemy forces, the occupation of the enemy territory, and the downfall of the enemy Government, the routed remnants of the defeated army carry on the contention by mere guerilla tactics. Although hopeless of success in the end, such petty war can go on for a long time thus preventing the establishment of a state of peace in spite of the fact that regular war is over and the task of the army of occupation is no longer regular warfare. Now the question whether such guerilla war is real war in the strict sense of the term in International Law must, I think, be answered in the negative, for two reasons. First, there are no longer the forces of two States in the field, because the defeated belligerent State has ceased to exist through the military occupation of its territory, the downfall of its established Government, the capture of the main part and the routing of the remnant of its forces. And, secondly, there is no longer in progress a contention between armed forces. For although the guerilla bands are still fighting when attacked, or when attacking small bodies of enemy soldiers, they try to avoid a pitched battle, and content themselves with the constant harassing of the victorious army, the destroying of bridges and railways, cutting off communications and supplies, attacking convoys, and the like, always in the hope that some event or events may occur which will induce the victorious army to withdraw from

the conquered territory. But if guerilla war is not real war, it is obvious that in strict law the victor need no longer treat the guerilla bands as a belligerent Power and the captured members of those bands as soldiers. It is, however, not advisable that the victor should cease such treatment as long as those bands are under responsible commanders and observe themselves the laws and usages of war. For I can see no advantage or reason why, although in strict law it could be done, those bands should be treated as criminals. Such treatment would only call for acts of revenge on their part, without in the least accelerating the pacification of the country. And it is, after all, to be taken into consideration that those bands act not out of criminal but patriotic motives. With patience and firmness the victor will succeed in pacifying these bands without recourse to methods of harshness.

Oppenheim, vol. 2, pp. 70–72.

Hostilities by private individuals.

Since International Law is a law between States only and exclusively, no rules of International Law can exist which prohibit private individuals from taking up arms and committing hostilities against the enemy. But private individuals committing such acts do not enjoy the privileges of members of armed forces, and the enemy has according to a customary rule of International Law the right to consider and punish such individuals as war criminals. Hostilities in arms committed by private individuals are not war crimes because they really are violations of recognised rules regarding warfare, but because the enemy has the right to consider and punish them as acts of illegitimate warfare. The conflict between praiseworthy patriotism on the part of such individuals and the safety of the enemy troops does not allow of any solution. It would be unreasonable for International Law to impose upon belligerents the duty to forbid the taking up of arms by their private subjects, because such action may occasionally be of the greatest value to a belligerent, especially for the purpose of freeing a country from the enemy who has militarily occupied it. Nevertheless the safety of his troops compels the enemy to consider and punish such hostilities as acts of illegitimate warfare, and International Law gives him a right to do so.

Oppenheim, vol. 2, p. 312, 313.

The employment of certain agents, instruments, and methods of warfare has given rise to many disputed questions. With regard to agents, we may say with confidence that soldiers and sailors of the regular armies and navies of the belligerents, including fully organized reserves and auxiliary forces, are legitimate combatants.

The only exception to this rule occurs when a belligerent finds some of his own subjects in the ranks of his enemies. In that case he may execute them, if they fall into his power.

Lawrence, p. 509.

Irregular forces.

In the Franco-Prussian war of 1870 the French raised irregular bands of *Francs-Tireurs*, which the Prussians declined to recognize as lawful combatants unless each individual member of them had

badge irremovable and sufficient to distinguish him at a distance. At the Brussels Conference of 1874 the matter was thoroughly discussed from every point of view. The representatives of the great military powers naturally desired to keep spontaneous movements within the narrowest possible bounds, while the delegates from the secondary states, who have to rely for their defence chiefly upon the patriotism of their people, endeavored to give the widest extension to the right of resistance against an invader. The differences of opinion thus brought into prominence have never been entirely reconciled.

Lawrence, pp. 511, 512.

Guerilla bands.

But in the matter of guerilla bands the Conference [Brussels, 1874] succeeded in coming to an agreement which was adopted in 1880 with a few changes of form by the Institute of International Law, and received the consecration of general assent when the Hague Conferences of 1899 and 1907 embodied it in the first Article of their Regulations respecting the Laws and Customs of War on Land. This Article may now be regarded as part of the war law of the civilized world. It placed on an equal footing as regards rights and obligations regular armies, and volunteer corps which

(*a*) Are commanded by a person responsible for his subordinates,
(*b*) Wear a fixed distinctive badge, recognizable at a distance,
(*c*) Carry arms openly, and,
(*d*) Conform in their operations to the laws and customs of war.

It is to be hoped that the concession of the first of these conditions marks the definite abandonment of the theory that members of partisan bodies must, individually and collectively, be summoned to arms by their government and connected directly with its military system. The second condition is just and reasonable, if it be not interpreted to mean that the distance must be considerable. What really matters is that members of guerilla bands should be distinguishable from ordinary civilians by the naked eye. A badge which is visible as far off as the inconspicuous uniform of modern infantry should be amply sufficient. The great point to be secured is its irremovable character. A man can not have the slightest moral right to the privileges of a combatant, if he appears one minute as the armed defender of his country and the next as a harmless peasant tilling his fields in peace and quietness. The third condition is justified by the same consideration. The inhabitants of an invaded country must choose whether they will fight or whether they will go about their ordinary business. They can not do both. The fourth condition is demanded by humanity. Irregular soldiers who do not conform to the laws of war become mere criminals and deserve the severest punishment.

On the whole there seems reason to be satisfied with these rules. They give scope to the spontaneous activities of patriotism, without neglecting either the claims of mercy or a reasonable consideration for the safety of the invading belligerent. But nevertheless they are so elastic that in practice a great deal will depend on the character and temperament of the generals in command. It should be noted that the rules deal throughout with bodies of men, not with individuals. If a member of a band is captured while detached by his

chief for separate service, such as cutting a telegraph wire or blowing up a bridge, he must prove that he belongs to an organized unit, before he can claim the treatment of a lawful combatant. Moreover, it is assumed that the bands are fighting for a cause and a government still in existence. If they keep up a partisan warfare in hills and remote fastnesses after the complete destruction of the state authority in whose interests they are fighting, in strictness of law they have ceased to be entitled to the rights of combatants.

Lawrence, pp. 512, 513.

Savage allies and auxiliaries.

Civilized states receive without scruple the aid of savage tribes in their warfare with barbarous or semi-barbarous foes. Even when both the principal belligerents are civilized, they have sometimes made use of barbarian auxiliaries in their struggles, but of late years less frequently than before. Throughout the eighteenth century the English and French habitually employed Red Indian Tribes in their North American wars. The British let them loose against the revolted Colonists, and the Colonists did their best to turn them against Great Britain. The Russians sent Circassians into Hungary in 1848, and the Turks flooded Bulgaria with Bashi-Bazooks in the war of 1877. But in the Boer War of 1899–1902 both sides abstained from sending the natives into the field as fighting men. The stress of conflict however led to their employment in work which was barely distinguishable from that of soldiers. The British used them as drivers and guides, and sometimes as spies. The Boers, for whom they dug trenches, frequently shot those who had rendered what were deemed war services to the invaders. The British then armed their Kaffirs for purposes of self-defence, and in the last part of the war employed them as night-watchmen on the blockhouse lines and along the railways. We may perhaps venture to hope that the force of enlightened opinion will before long compel the leading members of the family of nations to refrain from putting savages or semi-savages into the field, unless their foes themselves are barbarians. For the disuse of savage allies in these latter cases we shall probably have to wait till the feeling of human brotherhood has grown much stronger than it is to-day.

Lawrence, pp. 517, 518.

Recruits from barbarous or inferior races.

There can be no doubt about the legality of taking recruits from barbarous or inferior races and forming them into troops and regiments. If they are placed under military discipline, organized as part of the army of a civilized state, and led by civilized officers, they may be used without violation of the laws of war. The United States has its negro cavalry which it employed in the war of 1898 against Spain; the French their Turco brigades; the British their Ghoorka regiments. There is hardly a power possessed of a colonial empire, or ruling over martial races, which does not enrol native troops. International Law neither forbids their enlistment nor places limitations upon their employment. But it would certainly be humane to reserve them for use against border tribes and in warfare with people of the same degree of civilization as themselves.

After the old formula of *courir sus* had ceased in practice to launch all the subjects of a prince into hostilities against his enemies, it became the military fashion to regard professional soldiers as alone entitled to fight, any other persons who presumed to contend with them doing so at the peril of their lives without any protection from the usages of war. Thus "in 1742 the Austrians excluded the Bavarian militia from belligerent rights," and "it became the habit to refuse the privileges of soldiers not only to all who acted without express orders from their government, but even to those who took up arms in obedience to express orders when these were not addressed to individuals as part of the regular forces of the state."

In the capitulations of Quebec in 1759 and Canada in 1760 the militia were not left to the mercy of the English general only because it was "customary for the inhabitants of the colonies of both crowns to serve as militia." And as late as 1870, notwithstanding that public opinion had been slowly gaining ground in favour of irregulars, the Prussian commander-in-chief required that "every prisoner, in order to be treated as a prisoner of war, shall prove that he is a French soldier by showing that he has been called out and borne on the list of a military organised corps, by an order emanating from the legal authority and addressed to him personally."

Westlake, vol. 2, pp. 64, 65.

1. *To have at their head a person responsible for his subordinates;*

The Russian draft B IX added to this the condition that the person commanding should be subject to orders from headquarters, but that addition was not maintained in the text adopted for B IX, and therefore must not be understood here. Probably the responsibility intended is nothing more than a capacity of exercising effective control.

Westlake, vol. 2, p. 65.

The Prussians in 1870 and the French law of 20 August 1870 for the National Guard required the distinctive character [of the emblem to be worn by troops] to be recognisable at the distance of rifleshot, but this, if it ever could have been a requirement internationally valid, would certainly not be so now that the range of rifleshot has become so great.

Westlake, vol. 2, p. 65.

4. *To conduct their operations in accordance with the laws and customs of war.*

This must mean "generally to conduct" etc. A few breaches of the laws and customs of war by individuals would not disqualify a corps.

Westlake, vol. 2, p. 65.

When the inhabitants of an occupied district rise in insurrection, and satisfy the conditions of loyal fighting laid down by H I, it is difficult to refuse the privileges of combatants to a body of them operating on a scale which may fairly be considered as war. If they are to have those privileges when "they have displaced the occupation," they can not reasonably be refused them when taking the necessary means of displacing it; and that H I applies in occupied territory may be inferred from the restriction of H II to unoccupied territory.

Westlake, vol. 2, p. 101.

In time of war the regular troops of the enemy, the militia and the volunteer corps are considered as belligerents.

Volunteer corps and militia should be considered as belligerents only if they are commanded by a leader responsible for his subordinates, if they have very distinctive external badges, if they carry arms openly, and if they observe the laws and customs of war in their operations.

Articles 1 and 2, Russian Instructions, 1904.

31. *The army.*—The members of the army as above defined are entitled to recognition as belligerent forces whether they have joined voluntarily, or have been compelled to do so by state law, and whether they joined before or after war is declared, and whether they are nationals of the enemy or of a neutral state.

U. S. Manual, p. 21.

32. *The first condition for militia and volunteers corps.*—This condition is satisfied if commanded by a regularly or temporarily commissioned officer, or by a person of position and authority, or if the officers, non-commissioned officers, and men are furnished with certificates or badges, granted by the government of the state, that will distinguish them from persons acting on their own responsibility.

U. S. Manual, p. 21.

33. *The distinctive sign.*—This requirement will be satisfied by the wearing of a uniform, or even less than a complete uniform. The distance that the sign must be visible is left vague and undetermined and the practice is not uniform. This requirement will be satisfied certainly if this sign is "easily distinguishable by the naked eye of ordinary people" at a distance at which the form of an individual can be determined. Every nation making use of these troops should adopt, before hostilities commence, either a uniform or a distinctive sign which will fulfill the required conditions and give notice of the same to the enemy, although this notification is not required.

U. S. Manual, p. 22.

34. *Carrying arms openly.*—This condition is imposed to prevent making use of arms for active opposition and afterwards discarding or concealing them on the approach of the enemy, and will not be satisfied by carrying concealed weapons, such as pistols, daggers, sword sticks, etc.

U. S. Manual, p. 22.

35. *Compliance with the laws of war.*—When such troops are utilized they must be instructed in and be required to conform to the laws of war, and especially as to certain essentials, such as the use of treachery, maltreatment of prisoners, the wounded and dead, violations of or improper conduct toward flags of truce, pillage, unnecessary violence, and destruction of property, etc.

U. S. Manual, p. 22.

Under the term armed forces are comprised:

(i) The army: this includes militia or volunteer corps in countries where they constitute the national forces or form part of them. The

whether they have joined voluntarily or have been compelled to do so by State law, whether they are nationals of the enemy or of a neutral State, and whether they joined before or after the declaration of war.

(ii) Militia and volunteer corps which do not ordinarily form part of the army, but have been raised, possibly, for the duration of the war or even for the execution of some special operation. These irregular troops must, however, fulfill all of the following conditions:

(*a*) Be commanded by a person responsible for his subordinates;
(*b*) Have a fixed distinctive sign recognizable at a distance;
(*c*) Carry arms openly; and
(*d*) Conduct their operations in accordance with the laws and customs of war.

Edwards and Oppenheim, Art. 20.

The first condition, "to be commanded by a person responsible for his subordinates," is completely fulfilled if the commander of the corps is regularly or temporarily commissioned as an officer or is a person of position and authority, or if the members are provided with certificates or badges granted by the Government of the State to show they are officers, N. C. Os., or soldiers, so that there may be no doubt that they are not partisans acting on their own responsibility. State recognition, however, is not essential, and an organization may be formed spontaneously and elect its own officers.

The second condition, relative to the fixed distinctive sign recognizable at a distance, would be satisfied by the wearing of military uniform, but less than complete uniform will suffice. The distance at which the sign should be visible is left vague, but it is reasonable to expect that the silhouette of an irregular combatant in the position of standing against the skyline should be at once distinguishable from the outline of a peaceful inhabitant, and this by the naked eye of ordinary individuals, at a distance at which the form of an individual can be determined. As encounters now take place at ranges at which it is impossible to distinguish the colour or the cut of clothing, it would seem desirable to provide irregulars with a helmet, slouch hat, or forage cap, as being completely different in outline from the ordinary civilian headdress.

It may, however, be objected that a headdress does not legally fulfil the condition that the sign must be fixed. Something of the nature of a badge sewn on the clothing should therefore be worn in addition.

It is not necessary to inform the enemy of the distinctive mark adopted to fulfil the second condition, although to avoid misunderstandings it may be convenient to do so.

The third condition provides that irregular combatants shall carry arms openly. They may therefore be refused the rights of the armed forces if it is found that their sole arm is a pistol, handgrenade, or dagger concealed about the person, or a sword stick, or similar weapon, or if it is found that they have hidden their arms on the approach of the enemy.

The fourth condition requires that irregular corps shall conduct their operations in accordance with the laws and customs of war. It is especially necessary that they should be warned against

employment of treachery, maltreatment of prisoners, wounded, and dead, improper conduct towards flags of truce, pillage and unnecessary violence and destruction.

It is taken for granted that all members of the army as a matter of course will comply with the four conditions; should they, however, fail in this respect they are liable to lose their special privileges of armed forces.

Edmonds and Oppenheim, Arts. 22–28.

The privileges granted to irregular combatants by Article 1 of The Hague Rules, apply whether these combatants are acting in immediate combination with a regular army or separate from it.

Edmonds and Oppenheim, Art. 34.

Foreigners.

Foreigners who voluntarily enlist in the ranks of the armed force of one of the parties shall be treated as belligerents.

Jacomet, p. 28.

According to the universal usages of war, the following are to be regarded as occupying an active position:

1. The heads of the enemy's state and its ministers, even though they possess no military rank.

2. The regular army, and it is a matter of indifference whether the army is recruited voluntarily or by conscription; whether the army consists of subjects or aliens (mercenaries); whether it is brought together out of elements which were already in the service in time of peace, or out of such as are enrolled at the moment of mobilization (militia, reserve, national guard and Landsturm).

3. Subject to certain assumptions, irregular combatants, also, *i. e.*, such as are not constituent parts of the regular army, but have only taken up arms for the length of the war, or, indeed, for a particular task of the war.

Only the third class of persons need be more closely considered.

German War Book, p. 75.

Considered from the military point of view there is not much objection to the omission of the demand for public authorization, so soon as it becomes a question of organized detachments of troops, but in the case of hostile individuals who appear on the scene we shall none the less be unable to dispense with the certificate of membership of an organized band, if such individuals are to be regarded and treated as lawful belligerents.

But the organization of irregulars in military bands and their subjection to a responsible leader are not by themselves sufficient to enable one to grant them the status of belligerents; even more important than these is the necessity of being able to recognize them as such and of their carrying their arms openly. The soldier must know who he has against him as an active opponent, he must be protected against treacherous killing and against any military operation which is prohibited by the usages of war among regular armies. The chivalrous idea which rules in the regular armies of all civilized States always seeks an open profession of one's belligerent character. The

not in uniform, shall at least be distinguishable by visible signs which are recognizable at a distance. Only by such means can the occurrence of misuse in the practise of war on the one side, and the tragic consequences of the non-recognition of combatant status on the other, be made impossible. The Brussels Declarations also therefore recommend, in Art. 9 (2 and 3), that they, *i. e.*, the irregular troops, should wear a fixed sign which is visible from a distance, and that they should carry their weapons openly.

German War Book, p. 80.

Article 1, Annex to Hague Convention IV, 1907, is substantially identical with section 151, Austro-Hungarian Manual, 1913.

In negotiating a treaty with Russia, Mr. Buchanan was instructed to propose the insertion of two articles to the effect (1) that, in case of war, hostilities should be carried on only by duly commissioned officers and by persons under orders, except in repelling attack or invasion or in defence of property; and (2) that each contracting party should by law provide for the punishment of such of its citizens or subjects, or others under the authority of its laws, as should violate the terms of the proposed convention, particularly the stipulations for the protection of fishermen, husbandmen, and non-combatants and their property, and for preventing breaches of truces and armistices, injuries to prisoners of war, breaches of capitulations, unauthorized hostilities, injuries to the bearers of flags of truce, the massacre of enemies who had surrendered, the mutilation of the dead, injuries to diplomatic agents, the violation of diplomatic correspondence, and all other breaches of provisions, either of the treaty or of the law of nations for preserving peace or lessening the evils of war. It was besides proposed that the contracting parties should agree to enter into further negotiations for mitigating the horrors of war and confining its operations as much as possible to the military forces of the parties. It was stated that the proposed articles were "both of them new in our diplomacy," as well as in that of other nations, but that it was believed that they would, if adopted, be useful to the cause of humanity and civilization.

Moore's Digest, vol, 7, p. 176: Mr. Livingston, Sec. of State, to Mr. Buchanan, min. to Russia, No. 2, Mar. 31, 1832, MS. Inst. U. States Ministers, XIII, 281.

RISINGS IN MASS AGAINST INVADERS.

The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.[1]—*Article 2, Regulations, Hague Convention IV, 1907.*

Article 2.—German Amendment.

This amendment relates to risings in mass. It requires that, to be regarded as belligerents, the population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, must, in addition to respecting the laws and customs of war as stipulated in the old text, *carry arms openly.*

It seemed to the subcommission that this amendment had no other effect than to make the original text more definite without modifying its meaning to the prejudice of the population concerned.

The amendment was carried by 30 votes to 3, with 2 delegations, those of Switzerland and Montenegro, not voting.

The Commission gave its sanction to this vote without discussion.

"Reports to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," p. 522.

[For the statements concerning Article 2, Regulations, Hague Convention II, 1899, contained in the "Report to the Hague Conferences," see the discussion above, under Article 1, Regulations, Hague Convention, 1907.]

The armed force of a State includes:

1. * * *.

4. The inhabitants of non-occupied territory, who, on the approach of the enemy, take up arms spontaneously and openly to resist the invading troops, even if they have not had time to organize themselves.

Institute, 1880, p. 28.

Nevertheless, it often happens, in case of invasions, and in the siege of fortified towns, that not only merchants, mechanics, and the common peasantry, but also the clergy, magistrates, old men, women, and even children, take up arms and render good service in the common defense. In doing this they lose the character of *non-combatants*, and become subject to the ordinary rules of war. Those who lay

[1] This article is substantially identical with Article 2, Regulations, Hague Convention II, 1899, except for the addition of the words "if they carry arms openly."

aside their peaceful avocations and engage, either directly or indirectly, in hostile acts toward the enemy, whether by the orders of their government, or their own free will, are liable to the consequences which lawfully result from such acts, but to none others.

Halleck, p. 383.

Some have attempted to apply this rule to the insurgent inhabitants who, under the authority of the state, rise *en masse* and take arms to repel an invasion. The distinction between the two cases is too manifest to require an extended discussion. In the kind of guerrilla warfare before spoken of, the individuals composing the bands acknowledge no authority but that of their own chiefs. They derive no authority from the state, and the state is no more responsible for their acts than for the unauthorized acts of any other subjects. But, in the case of a levy *en masse*, the inhabitants are organized and armed under the direction of the public authorities, and the state is directly responsible for their acts. In guerrilla warfare the individual alone is responsible for his acts, but where the mass of the people of a city or district bear arms under the direction of the government, they have become a legitimate part of the army, and the whole state is chargeable with any breach of the laws of war which they may commit. Any non-combatant may become a combatant without incurring any other penalty than that of being made subject to the laws applicable to active belligerents. If captured, they are entitled to the treatment of ordinary prisoners of war. The law of nations has, not unfrequently, been violated in European wars by disregarding the distinction which we have here pointed out between the unauthorized acts of self-constituted guerrilla bands, and the authorized acts of *levies en masse*, organized and armed under the authority of the state.

Halleck, p. 387.

[Those who are authorized by the express or implied command of a state to commit acts of hostility] are * * * all others * * * spontaneously defending themselves in case of urgent necessity, without any express authority for that purpose.

Dana's Wheaton, pp 451, 452.

So far as organised bodies of troops are concerned, the latter power [Germany] has now receded from its position of 1870–1, but it still insists on the necessity for such proof in the case of individuals: witness the following extract from the official manual:

From the military point of view, there is no great objection to waiving the demand for an authority from the Government, when it is a question of organised units; but, where *individual* enemies are concerned, it is impossible to forego the requirement of some proof that they belong to an organised body, to entitle them to treatment as beligerents and not as bandits.

One finds the same view emerging in the South African War. The British authorities refused to treat *snipers*, or individuals who carried on hostilities without belonging to any commando, as proper combatants. They ordered them either to desist from sniping or to go regularly on commando, and burnt their farms down if they disobeyed, or, when they could catch them, imprisoned or deported

them. One can hardly question a commander's right to treat such individual fighters as illegitimate combatants, in the absence of proof to the contrary. No invader will suffer the "peaceable" inhabitants to indulge in some amateur hedgerow fighting in his spare moments, and while it would be unreasonable to require a massed *lèvee*, never to disintegrate and to forbid its leader ever to detach one or two men for a special service—to blow up a bridge, perhaps, or to carry despatches, or to signal to other bodies—military exigencies appear to justify the requirement of some proof that such individuals are not inhabitants meddling improperly with hostilities. The question of qualification would ordinarily arise only on the capture of the suspected persons, and if they could produce some authority, duly attested, showing that they belonged to a *lèvee en masse*, which *lèvee* was recognised by the capturing belligerent, the latter could hardly refuse them combatant rights without rendering his recognition of the *lèvee* they belong to illusory.

Spaight, pp. 52, 53; *Kriegsbrauch im Landkriege*, p. 6.

The word "spontaneously" indicates a concession or a sufferance. "This is demanding less than if an order of the Government were required, which might often not reach the volunteers" (i. e. *lèvee*).

The word "territory" was used instead of locality because the latter might imply that, in a territory containing various towns and villages ("localities"), each separate locality must abstain from action till actually threatened. This would render the principle of a *lèvee en masse* illusory.

Spaight, p. 57; Brussels B. B., p. 293.

In the Russo-Japanese War, Professor Ariga relates that the Japanese took advantage of Article II of the Hague to organise a levy at Niou-tsia-toun, a town in the rear of the Japanese army of Manchuria, against which General Mistchenko made a raid in February, 1905, through neutral territory. The individuals who were mustered to defend the town wore no distinctive sign and only carried pistols, which could not be considered arms "carried openly." As the Hague condition that a *lèvee en masse* must carry arms openly was not then in force (being added at the Conference of 1907), Professor Ariga considers that the requirements of Article II were fulfilled and that the men were legitimate combatants. This case is particularly instructive as showing the application to the inhabitants in the *rear* of an army of a provision which was discussed and sanctioned in connection with the defence of an otherwise undefended territory by its massed citizens. The analogy is clear and Professor Ariga's ruling seems sound.

Spaight, p. 59; Ariga, pp. 82–84.

The amendment in this Article [2, Hague Regulations] relating to levies *en masse* requires that in addition to respecting the laws and usages of war such persons as have not had time to organise themselves in accordance with Article 1 "must carry arms openly." This amendment was inserted on the proposition of the German delegate. This was carried in Committee by 30 to 3, with 2 abstentions.

Higgins, p. 261.

Distinction between invasion and occupation.

It sometimes happens during war that on the approach of the enemy a belligerent calls the whole population of the country to arms and thus makes them a part, although a more or less irregular part, of his armed forces. Provided they receive some organisation and comply with the laws and usages of war, the combatants who take part in such a levy *en masse* organised by the State enjoy the privileges due to members of armed forces.

It sometimes happens, further, during wars, that a levy *en masse* takes place spontaneously without organisation by a belligerent, and the question arises whether or not those who take part in such levies *en masse* belong to the armed forces of the belligerents, and therefore enjoy the privileges due to members of such forces. Article 2 of the Hague Regulations stipulates that the population of a territory not yet occupied who, on the enemy's approach, spontaneously take up arms to resist the invading enemy, without having time to organise themselves under responsible commanders and to procure fixed distinctive emblems recognisable at a distance, shall nevertheless enjoy the privileges due to armed forces, provided that they carry arms openly and act otherwise in conformity with the laws and usages of war. But this case is totally different from a levy *en masse* of the population of a territory already invaded by the enemy, for the purpose of freeing the country from the invader. The stipulation of the Hague Regulations quoted above does not cover this case, in which, therefore, the old customary rule of International Law is valid, that those taking part in such a levy *en masse*, if captured, are liable to be shot.

It is of particular importance not to confound invasion with occupation in this matter. Article 2 distinctly speaks of the *approach* of the enemy, and thereby sanctions only such a levy *en masse* as takes place in territory not yet *invaded* by the enemy. Once the territory is invaded, although the invasion has not yet ripened into occupation, a levy *en masse* is no longer legitimate. But, of course, the term *territory*, as used by article 2, is not intended to mean the whole extent to the State of a belligerent, but refers only to such parts of it as are not yet invaded. For this reason, if a town is already invaded, but not a neighbouring town, the inhabitants of the latter may, on the approach of the enemy, legitimately rise *en masse*. And it matters not whether the individuals taking part in the levy *en masse* are acting in immediate combination with a regular army or separately from it.

Oppenheim, vol. 2, p. 97.

War rebellion.

It is usual to make a distinction between hostilities in arms on the part of private individuals against an invading or retiring enemy on the one hand, and, on the other, hostilities in arms committed on the part of the inhabitants against an enemy occupying a conquered territory. In the latter case one speaks of war rebellion, whether inhabitants take up arms singly or rise in a so-called levy *en masse*. Articles 1 and 2 of the Hague Regulations make the greatest possible concessions regarding hostilities committed by irregulars. Beyond the limits of these concessions belligerents will never be able to go without the greatest danger to their troops.

Oppenheim, vol. 2, p. 313.

But a different question arises when the ordinary untrained inhabitants of a non-occupied district rise at the approach of an invader, and either alone or in conjuction with regular troops endeavor to beat him off. This is a not infrequent case; and at the Brussels Conference of 1874 the smaller powers of Europe contended almost passionately for its legality. After a long discussion it was agreed to consider such bodies of men as belligerents "if they respect the laws and customs of war." The first Hague Conference laid down the same condition, and the second added another to it. They must carry arms openly. If these two simple and necessary requirements are complied with, the population of a territory that has not been occupied who on the approach of an invader spontaneously take up arms to resist him are deemed lawful combatants, even though they have not had time to organize themselves in the manner provided for irregular bands. It was rightly considered that the masses of a popular levy extending over a considerable area of country would be sufficient evidence of their own hostile character, even though no badges were worn by the individuals of whom they were composed. But it may be questioned whether invaded states, in their own interests, ought not to insist that there should be at the head of the levy a responsible leader, since Article 3 of the fourth Hague Convention of 1907 makes a belligerent government liable to pay compensation for violations of the laws of war on land "committed by persons forming part of its armed forces."

Lawrence, p. 515.

And when the rising takes place in a limited area, it may be difficult to tell whether those who rise are to be regarded as a guerilla band or as a levy *en masse*. This difficulty occurred during the Japanese invasion of the island of Sakhalin in 1905. The town of Vladimirowka was defended by a number of Russian convicts. They had no mark whereby they could be distinguished from the ordinary inhabitants, and they were not under the command of any chief. If they claimed to be an irregular band, they were leaderless and badgeless. If they claimed to be a popular levy resisting invasion by a spontaneous impulse, they were not inhabitants. In neither case did they know or observe the laws and customs of war. About a hundred and twenty of them were shot after trial by court martial, though their captors were not clear in what capacity to regard them. The decision to execute them was probably right, since they satisfied the conditions of neither kind of irregular belligerency. But it is easy to see that in less conclusive circumstances the lives of prisoners might depend on whether they were regarded as members of a band or members of a levy *en masse*.

Lawrence, pp. 515, 516.

No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

If, however, the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

Lieber, Art. 52.

The inhabitants of an enemy country who have taken up arms upon the approach of our army, but have not had sufficient time to organize themselves into volunteer corps, may be considered as belligerents if they observe the laws and customs of war in their operations.

Art. 3, Russian Instructions, 1904.

37. *Can not be treated as brigands, etc.*—No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

U. S. Manual, p. 23.

38. *Deserters, etc., do not enjoy immunity.*—Certain classes of those forming part of a *levee en masse* can not claim the privileges accorded in the preceding paragraph. Among these are deserters, subjects of the invading belligerent, and those who are known to have violated the laws and customs of war.

U. S. Manual, p. 23.

39. *Uprisings in occupied territory.*—If the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

U. S. Manual, p. 23.

40. *Duty of officers as to status of troops.*—The determination of the status of captured troops is to be left to courts organized for the purpose. Summary executions are no longer contemplated under the laws of war. The officers' duty is to hold the persons of those captured, and leave the question of their being regulars, irregulars, deserters, etc., to the determination of competent authority.

U. S. Manual, p. 23.

Under the term armed forces are comprised:

* * * * * * *

The inhabitants of a territory not under occupation who, on the approach of an enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves as laid down in (i) or (ii), provided they conform to conditions (*c*) and (*d*) laid down above for irregular combatants.

Edmonds and Oppenheim, Art. 20 (iii).

A rising of "the inhabitants of a territory not under occupation who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves," is spoken of as a *levée en masse.* Such inhabitants are recognized as having the privileges of belligerent forces if they fulfil the last two conditions laid down for irregulars; these are: to carry arms openly and to conduct their operations in accordance with the laws and customs of war. They are exempt from the obligations of being under the command of a responsible commander and wearing a distinctive sign. It must, however, be emphasized that the inhabitants of a territory already invaded by the enemy who rise in arms do not enjoy the privileges of belligerent forces.

The rules which affect a *levée en masse* should be generously interpreted. The first duty of a citizen is to defend his country, and provided he does so loyally he should not be treated as a marauder or criminal.

The word territory in this relation is not intended to mean the whole extent of a belligerent State, but refers to any part of it which is not yet invaded.

Thus if an enemy approaches a town or village with the purpose of seizing it, the inhabitants, if they defend it, are entitled to the rights of regular combatants, as a *levée en masse*, although they wear no distinctive mark; in this case all the inhabitants of a town may be considered legitimate enemies until the town is taken.

Edmonds and Oppenheim, Arts. 29–32.

This article [Hague Regulation 2, Convention IV, 1907] is to be interpreted in a very broad sense, and every belligerent should be generous toward a people who, on the approach of the enemy, rise for the defense of their soil.

The laws of war forbid deceiving the adversary by pretending first to be a peaceful inhabitant and then an enemy. Any act of this nature, amounting as it does to perfidy, shall entail upon him who commits it the loss of his character as a belligerent.

Jacomet, p. 29.

The Hague Convention adds to these three conditions yet a fourth, "That they observe the laws and usages of war in their military operations."

This condition must also be maintained if it becomes a question of the *levée en masse*, the arming of the whole population of the country, province, or district; in other words the so-called people's war or national war. Starting from the view that one can never deny to the population of a country the natural right of defense of one's fatherland, and that the smaller and consequently less powerful States can only find protection in such *levées en masse*, the majority of authorities on International law have, in their proposals for codification, sought to attain the recognition on principle of the combatant status of all these kinds of people's champions, and in the Brussels declaration and the Hague Regulations the aforesaid condition is omitted. As against this one may nevertheless remark that the condition requiring a military organization and a clearly recognizable mark of being attached to the enemy's troops, is not synonymous with a denial of the natural right of defense of one's country. It is therefore not a question of restraining the population from seizing arms but only of compelling it to do this in an organized manner. Subjection to a responsible leader, a military organization, and clear recognizability cannot be left out of account unless the whole recognized foundation for the admission of irregulars is going to be given up altogether, and a conflict of one private individual against another is to be introduced again, with all its attendant horrors, of which, for example, the proceedings in Bazeilles in the last Franco-Prussian War afford an instance. If the necessary organization does not really become established—a case which is by no means likely to occur often—then nothing remains but a conflict of individuals, and those who conduct it cannot claim the rights of an

active military status. The disadvantages and severities inherent in such a state of affairs are more insignificant and less inhuman than those which would result from recognition.

German War Book, p. 81.

According to the notions of the laws of war today the following persons are to be treated as prisoners of war:

* * * * * * *

6. The mass of the population of a province or a district if they rise in defense of their country.

German War Book, pp. 91, 92.

Article 2, Annex to Hague Convention IV, 1907, is substantially identical with section 152, Austro-Hungarian Manual, 1913.

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COMBATANTS AND NON-COMBATANTS IN ARMY—TREATMENT, IF CAPTURED.

The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.[1]—*Article 3, Regulations, Hague Convention IV, 1907.*

The third and last article of this chapter, which is identical except as to details of form with Article II of the Brussels draft, expressly says that non-combatants forming part of an army should also be deemed belligerents, and that both combatants and non-combatants, that is to say *all belligerents,* have a right in case of capture by the enemy to be treated as prisoners of war.

There was some thought of transferring this article, or at least its last sentence, to the chapter on prisoners of war. But in the end it appeared useful, after having defined the conditions of belligerency, to state at once this essential right that a belligerent possesses in case of capture by the enemy, to be treated as a prisoner of war. And besides, this gives us a very natural transition to chapter II, which follows immediately and fixes the condition of prisoners of war. Before the above declaration, adopted on the motion of Mr. Martens,was communicated to the subcommission General Sir John Ardagh, technical delegate of Great Britain, proposed to add at the end of the first chapter the following provision:

Nothing in this chapter shall be considered as tending to diminish or suppress the right which belongs to the population of an invaded country to patriotically oppose the most energetic resistance to the invaders by every legitimate means.

From a reading of the minutes of the meeting of June 20, it would seem that most of the members of the subcommission were of opinion that the rule thus formulated added nothing to the declaration which Mr. Martens had read at the opening of that meeting. The delegation of Switzerland, nevertheless, appeared to attach great importance to this additional article and went so far as to suggest that its adhesion to Articles 1 and 2 (Brussels 9 and 10) might not be given if the proposal of Sir John Ardagh was not adopted. Mr. Künzli spoke to that effect. On the other hand, the technical delegate of Germany, Colonel Gross von Schwarzhoff, emphatically asserted that Article 9 of Brussels (now the first article) makes recognition of belligerent status depend only on conditions that are very easy to fulfil; he said that there was consequently in his view no need of voting for Article 10 (now Article 2), which also recognizes as belligerents the population of territory that is not yet occupied under the sole condition that it respects the laws of war; but that he had nevertheless voted for that article in a spirit of conciliation. 'At this point, however,' said the German delegate most

[1] This article is identical with Article 3, Regulations, Hague Convention II, 1899.

emphatically, 'my concessions cease; it is absolutely impossible for me to go one step further and follow those who declare for an absolutely unlimited right of defence.'

At the end of the debate and in consideration of the declaration adopted on motion of Mr. Martens, Sir John Ardagh withdrew his motion, for the sake of harmony.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," pp. 141, 142.

Individuals who form a part of the belligerent armed force, if they fall into the hands of the enemy, are to be treated as prisoners of war, in conformity with Articles 61 *et seq.*

Institute, 1880, p. 31.

A combatant is any person directly engaged in carrying on war, or concerned in the belligerent government, or present with its armies and assisting them; although those who are present for purposes of humanity and religion—as surgeons, nurses, and chaplains—are usually classed among non-combatants, unless special reasons require an opposite treatment of them.

Woolsey, p. 214.

All persons whom a belligerent may kill become his prisoners of war on surrendering or being captured. But as the right to hold an enemy prisoner is a mild way of exercising the general rights of violence against his person, a belligerent has not come under an obligation to restrict its use within limits so narrow as those which confine the right to kill. He may capture all persons who are separated from the mass of non-combatants by their importance in the enemy's state, or by their usefulness to him in his war. Under the first of these heads fall the sovereign and the members of his family when non-combatants, the ministers and high officers of government, diplomatic agents, and any one who for special reasons may be of importance at a particular moment. Persons belonging to the auxiliary departments of an army, whether permanently or temporarily employed, such as commissariat employés, military police, guides, balloonists, messengers, and telegraphists, when not offering resistance on being attacked by mistake, or defending themselves personally during an attack made upon the combatant portions of the army, in which case they become prisoners of war as combatants, are still liable to capture, together with contractors and every one present with a force on business connected with it, on the ground of the direct services which they are engaged in rendering.

Hall, p. 420.

The word "parties" was adopted in preference to "States," as including such non-State belligerents as the "Sunderbund", the Secessionists, etc.

The non-combatants dealt with in this article form an integral part of an army. The word "non-combatant" is used in two different senses in war law. (1) It is used of the non-military inhabitants of a country which is the seat of war, who take no part in the conflict, and who, if they feel the effect of the backwash of the war, only do so because of the ample sea-room which belligerents require. (2) It is used, as in this Article, of the troops, commissioned and enlisted, form-

ing part of the regular, militia, or volunteer organisation whose function is ancillary to that of the fighting men and who do not themselves oppose the enemy arms in hand. The troops of the commissariat and intendance, of the veterinary service, of the pay and accounting department, orderlies, clerks, bandsmen, are non-combatants in the sense of Article 3. So, too, are the medical *personnel* and army chaplains, who, however, are further protected by the Geneva Convention.

Spaight, p. 58; Brussels B. B., p. 259.

In the main, armed forces consist of combatants, but no army in the field consists of combatants exclusively, as there are always several kinds of other individuals, such as couriers, aeronauts, doctors, farriers, veterinary surgeons, chaplains, nurses, official and voluntary ambulance men, contractors, canteen-caterers, newspaper correspondents, civil servants, diplomatists, and foreign military attaches in the suite of the Commander-in-Chief.

Writers on the Law of Nations do not agree as regards the position of such individuals; they are not mere private individuals, but, on the other hand, are certainly not combatants, although they may—as, for instance, couriers, doctors, farriers, and veterinary surgeons—have the character of soldiers. They may correctly be said to belong *indirectly* to the armed forces. Article 3 of the Hague Regulations expressly stipulates that the armed forces of the belligerents may consist of combatants and non-combatants, and that both in case of capture must be treated as prisoners of war, provided they produce a certificate of identification from the military authorities of the army they are accompanying. However, when one speaks of armed forces generally, combatants only are in consideration.

Oppenheim, vol. 2, p. 95.

Important officials.

The head of the enemy State and officials in important posts, in case they do not belong to the armed forces, occupy, so far as their liability to direct attack, death, or wounds is concerned, a position similar to that of private enemy persons. But they are so important to the enemy State, and they may be so useful to the enemy and so dangerous to the invading forces, that they may certainly be made prisoners of war. If a belligerent succeeds in obtaining possession of the head of the enemy State or its Cabinet Ministers, he will certainly remove them into captivity. And he may do the same with diplomatic agents and other officials of importance, because by weakening the enemy Government he may thereby influence the enemy to agree to terms of peace.

Oppenheim, vol. 2, p. 153, 154.

Numerous individuals belong to the armed forces without being combatants. Now, since and in so far as these non-combatant members of armed forces do not take part in the fighting, they may not directly be attacked and killed or wounded. However, they are exposed to all injuries indirectly resulting from the operations of warfare. And, with the exception of the personnel engaged in the interest of the wounded, such as doctors, chaplains, persons employed in military hospitals, official ambulance men, who, according to articles 9 and 10 of the Geneva Convention, are specially privileged,

such non-combatant members of armed forces may certainly be made prisoners, since the assistance they give to the fighting forces may be of great importance.

Oppenheim, vol. 2, p. 151.

We will begin by dealing with combatants. It has been shown already that the distinction between them and noncombatants in respect of the severities of warfare is comparatively modern, and represents a conspicuous triumph of humanity. It is, however, obscured by the wording of article 3 of the Hague Regulations, which declares that "the armed forces of the belligerents may consist of combatants and non-combatants." Here the non-combatants are a division of the armed forces, and consist apparently of those who perform auxiliary services, such as driving a baggage wagon or working a field telegraph. Such persons carry arms and are expected to use them if attacked, though they are not placed in the fighting line and as a rule take no active part in the conflict. They should, however, be reckoned as combatants, since they are attached to the combatant forces and do fight on rare occasions. The true non-combatants are those who are enrolled in no force, carry no arms, and are engaged in the ordinary occupations of peaceful life.

Lawrence, pp. 395, 396.

The persons who form part of the armed forces though non-combatants are such as chaplains, quartermasters, persons in the commissariat, and doctors and persons in the sanitary service except so far as protected by the Geneva convention.

Westlake, vol. 2, p. 67.

Non-combatants, as well as combatants, may be made prisoners; both are regarded as prisoners of war.

Art. 25, Russian Instructions, 1904.

Every member of the armed forces, if he falls into the hands of the enemy, has a claim to be treated as a prisoner of war, unless he has committed a war crime.

Edmonds and Oppenheim, Art. 56.

With the exception of those who enjoy special immunities, all others shall be subject to the law of war.

All persons who, with the consent of the commanding authority, are attached to the service of the troops, shall be classed with belligerents even though they do not participate in the warlike operations as combatants, that is, all functionaries attached to the armies, guides, messengers, sutlers, mess stewards and duly authorized purveyors, convoy packers, automobilists, postal and railroad employees, aeronauts, aviators, and journalists authorized to follow the headquarters.

The personnel of the field railroad sections is, by virtue of art. 8 of the law of July 24, 1873, subject to all the obligations of the military service, enjoys all the rights of belligerents, and is amenable to all the rules of the law of nations (art. 4 of the decree of Dec. 8, 1909, on the organization of field railroad sections).

Jacomet, pp. 28, 29.

Article 3, Annex to Hague Convention IV, 1907, is substantially identical with section 153, Austro-Hungarian Manual, 1913.

PRISONERS OF WAR, TREATMENT OF—THEIR PERSONAL BELONGINGS.

Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them.
They must be humanely treated.
All their personal belongings, except arms, horses, and military papers, remain their property.[1]—*Article 4, Regulations, Hague Convention IV, 1907.*

The chapter on prisoners of war in the Brussels Declaration of 1874 (Articles 23–34) began with a definition forming the first paragraph of Article 23 and couched in the following terms: "Prisoners of war are lawful and disarmed enemies." This definition was, so to speak, the residuum of another and much longer definition in Article 23 of the first draft submitted to the Brussels Conference by the Imperial Russian Government. Considering the rather vague character of these definitions and the difficulty of finding any other that is more complete and more precise, the subcommission agreed to leave out the definition and to confine itself in this chapter to saying what shall be the treatment of prisoners of war.

It is for these reasons that Article 4, which is the first one under this chapter and corresponds to Article 23 of the Brussels project, begins at once with these words: 'Prisoners of war are in the power of the hostile Government, etc.'

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 142.

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to the world and to each other that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies or any other parts of Asia or Africa, but that they shall be placed in some parts of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs;

Treaty of Amity and Commerce between the United States and Prussia, concluded July 11, 1799, Article XXIV.

If, in the fluctuation of human events, a war should break out between the two nations, the prisoners captured by either party shall not be made slaves, but shall be exchanged rank for rank. And if there should be a deficiency on either side, it shall be made up by the payment of five hundred Spanish dollars for each captain, three

[1] This article is substantially identical with Article 4, Regulations, Hague Convention II, 1899.

hundred dollars for each mate and supercargo, and one hundred Spanish dollars for each seaman so wanting. And it is agreed that prisoners shall be exchanged in twelve months from the time of their capture; and that this exchange may be effected by any private individual legally authorized by either of the parties.

Treaty of Peace and Amity between the United States and Tripoli, concluded June 4, 1805, Article XVI.

In case of a war between the parties, the prisoners are not to be made slaves, but to be exchanged, one for another, captain for captain, officer for officer, and one private man for another; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican dollars for each person wanting. And it is agreed that all prisoners shall be exchanged in twelve months from the time of their being taken, and that this exchange may be effected by a merchant or any other person authorized by either of the parties.

Treaty of Peace and Friendship, between the United States and Morocco, concluded September 16, 1836, Article XVI.

In order that the fate of prisoners of war may be alleviated, all such practices as those of sending them into distant, inclement, or unwholesome districts, or crowding them into close and noxious places, shall be studiously avoided. They shall not be confined in dungeons, prison-ships, or prisons; nor be put in irons, or bound, or otherwise restrained in the use of their limbs.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

Prisoners of war are lawful and disarmed enemies.

They are in the power of the hostile government but not in that of the individuals or corps who captured them.

They must be humanely treated.

Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

All their personal belongings except arms remain their property.

Art. 23, Declaration of Brussels.

Prisoners of war are in the power of the hostile government, but not in that of the individuals or corps who captured them.

* * * * * * *

They must be humanely treated.

All their personal belongings, except arms, remain their property.

Institute, 1880, p. 38.

Combatants become prisoners of war, and, when they cease to resist, are to be treated with humanity, and to have medical aid and care.

Dana's Wheaton, note 166, par. III.

Exception—deserters.

The penalty for desertion is not avoided by the deserter having joined the enemy's service and been taken prisoner in battle.

Dana's Wheaton, note 166, par. III.

The killing of prisoners can only be justifiable in those extreme cases where resistance on their part, or on the part of others who come to their rescue, renders it impossible to keep them. Both reason and general opinion concur in showing, that nothing but the strongest necessity will justify such an act.

Dana's Wheaton, pp. 427, 428.

If one general kills in cold blood some hundreds of prisoners who embarass his motions, his antagonist may not be justified in staining himself by similar crime, nor may he break his word or oath because the other had done so before.

Woolsey, p. 211.

The property belonging to combatants, or taken on the field of battle, has been considered to be lawful plunder, and usually goes to the [captor state, which disposes of it as it chooses, often dividing it amongst its soldiers. In the United States this policy is not pursued]

Woolsey, p. 216.

Exception—deserters.

Deserters, if captured acquire no rights from joining the other belligerent, and may be put to death.

Woolsey, p. 216.

The rights possessed by a belligerent over his prisoners under the modern customs of war are defined by the same rule, that more than necessary violence must not be used, which ought to govern him in all his relations with his enemy.

Hall, p. 423.

Large sums of money.

Prisoners may, of course, be deprived for a time of the use of their property, for sufficient reasons; and it may be a question whether large sums of money found upon prisoners, or in their baggage, are, in fact, their private property.

Holland, p. 21.

Prisoners must be treated with humanity. I have already referred to the right sometimes claimed for a commander of destroying prisoners whom he finds it inconvenient to keep. To do so in civilised war would be simply sheer barbarity, excusable on no conceivable ground. The second Spanish delegate at Brussels asked for the insertion of a clause providing that:

Troops escorting a convoy of prisoners of war may not execute them, even in case the of their being attacked during their march by the hostile force, with the object of rescuing the prisoners. But if the prisoners take part in the combat in any way they forfeit by this act their character of prisoners of war.

The Committee held that the Spanish proposition was met by the general provision prescribing humane treatment and simply recorded the proposition in the Protocol as a "gloss" on the text. It clearly contains an implied and unwritten law of war.

Spaight, p. 265; Brussels B. B., p. 212.

Internment in unhealthy localities.

Prisoners of war must not be interned in unhealthy localities. A specific proposal to this effect was put forward at Brussels by the Spanish delegation, but was not pressed when a delegate pointed out that it was covered by the provision as to humane treatment.

Spaight, p. 267; Brussels B. B., p. 213.

It is within a belligerent's discretion to decline to allow exchanges or paroles, and if he does decline, that does not free the other belligerent from his obligation to treat his captives with humanity. Such an obligation was not created at the Hague. It would exist, and did exist, if no International Conference had ever sat.

Spaight, p. 272.

Temporary charge of effects.

The regulations for the treatment of prisoners of war issued by the 2nd Japanese army in 1904 contained the following provision:

> Not only the spoliation, but even the simple transfer, by way of a gift, of articles of a non-warlike nature which the prisoners have been permitted to take with them or which have belonged to the enemy's dead, are strictly prohibited.

The captor may, however, find it advisable to take charge of their effects temporarily. As General Voigts-Rhetz pointed out at Brussels in 1874—and his observation was recorded in the Protocol as an accepted "gloss" upon the text—"if a prisoner is the bearer of a large sum of money, it might be taken charge of for the time, because money facilitates escape; a receipt should be given to the prisoner and the money should be repaid to him later." The Russian Regulations of 1877, the German Official Manual and the Japanese Regulations of February, 1904, all provide for the property of prisoners being stored by the capturing State and returned to the owners on their liberation. It is usual to allow an officer to retain his sword on capture, but he can not claim to wear it during captivity.

Spaight, pp. 279, 280; Brussels B. B., p. 213; De Martens, p. 480; *Kriegsbrauch im Landkriege*, p. 14; Ariga, p. 96.

During antiquity, prisoners of war could be killed, and they were very often at once actually butchered or offered as sacrifices to the gods. If they were spared, they were as a rule made slaves and only exceptionally liberated. But belligerents also exchanged their prisoners or liberated them for ransom. During the first part of the Middle Ages prisoners of war could likewise be killed or made slaves. Under the influence of Christianity, however, their fate in time became mitigated. Although they were often most cruelly treated during the second part of the Middle Ages, they were not as a rule killed and, with the disappearance of slavery in Europe, they were no longer enslaved. By the time modern International Law gradually came into existence, killing and enslaving prisoners of war had disappeared, but they were still often treated as criminals and as objects of personal revenge. They were not considered in the power of the State by whose forces they were captured, but in the power of those very forces or of the individual soldiers that had made the capture. And it was considered lawful on the part of captors to make as much profit as possible out of their prisoners by way of ransom, provided no exchange of prisoners took place. So general was this practice

that a more or less definite scale of ransom became usual. Thus, Grotius (III. c. 14, sec. 9) mentions that in his time the ransom of a private was the amount of his one month's pay. And since the pecuniary value of a prisoner as regards ransom rose in proportion with his fortune and his position in life and in the enemy army, it became usual for prisoners of rank and note not to belong to the capturing forces but to the Sovereign, who had, however, to recompense the captors. During the seventeenth century, the custom that prisoners were considered in the power of their captors died away. They were now considered to be in the power of the Sovereign by whose forces they were captured. But rules of the Law of Nations regarding their proper treatment were hardly in existence. The practice of liberating prisoners in exchange, or for ransom only, continued. Special cartels were often concluded at the outbreak of or during a war for the purpose of stipulating a scale of ransom according to which either belligerent could redeem his soldiers and officers from captivity. The last instance of such cartels is that between England and France in 1780, stipulating the ransom for members of the naval and military forces of both belligerents.

* * * * * * *

The Treaty of Friendship concluded in 1785 between Prussia and the United States of America was probably the first to stipulate (Article 24) the proper treatment of prisoners of war, prohibiting confinement in convict prisons and the use of irons, and insisting upon their confinement in a healthy place, where they may have exercise and where they may be kept and fed as troops.

* * * * * * *

According to articles 4–7 and 16–19 of the Hague Regulations prisoners of war are not in the power of the individuals or corps who capture them, but in the power of the Government of the captor. They must be humanely treated. All their personal belongings remain their property, with the exception of arms, horses, and military papers, which are booty; and in practice personal belongings are understood to include military uniform, clothing, and kit required for personal use, although technically they are Government property.

Oppenheim, vol. 2, pp. 165–168.

Exception.

The only exception to this humane custom occurs when a state finds subjects of its own fighting against it in the ranks of its foes. It would then have the right, should it capture them, to execute them as traitors, instead of treating them as prisoners of war.

Lawrence, p. 367.

As soon as prisoners are captured they come under the power of the hostile government. It, and not the individual captors, is responsible for their treatment. Their personal belongings remain their property, with the exception of their arms, horses, and military papers, which may be confiscated.

Lawrence, p. 400.

The Hague Regulations as to captives marked a great advance towards this end, and scarcely had they been drafted in 1899, when

Great Britain went beyond them in the Boer War, and organized sports and schools for the benefit of her prisoners interned in Ceylon and St. Helena. Three or four years later Japan followed the British example, and is said to have imported special cooks to prepare European food for her Russian prisoners. It may be hoped that similar advances will take place in other departments of warfare.

Lawrence, p. 403.

Exception as to large sums of money.

Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited.

Nevertheless, if *large* sums are found upon the persons of prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the army, under the direction of the commander, unless otherwise ordered by the government. Nor can prisoners claim, as private property, large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

Lieber, Art. 72.

Side-arms.

All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored can not wear them during captivity.

Lieber, Art. 73.

Prisoners of war should be treated with humanity * * * They shall be subject to the same treatment as that given to soldiers of the Russian Army.

Art. 28, Russian Instructions, 1904.

All their personal belongings, except arms, harness, and military papers, shall remain the property of the prisoners.

Art. 32, Russian Instructions, 1904.

Subject to military jurisdiction.—All physical suffering, all brutality which is not necessitated as an indispensable measure for guarding prisoners, are formally prohibited. If prisoners commit crimes or acts punishable according to the ordinary penal or military laws, they are subjected to the military jurisdiction of the state of the captor.

U. S. Manual, p. 26.

Can not retain large sums of money.—This rule does not authorize prisoners to retain large sums of money, or other articles which might facilitate their escape. Such money and articles are usually taken from them, receipts are given, and they are returned at the end of the war.

U. S. Manual, p. 27.

Belongings not transportable.—This rule does not compel the captor to be responsible for such personal belongings of prisoners as they are unable to transport with them.

U. S. Manual, p. 27.

Includes uniform, etc.—In practice personal belongings are understood to include military uniforms, clothing, and kit required for personal use, although technically they may belong to their Government.

U. S. Manual, p. 27.

Booty.—All captures and booty, except personal belongings of prisoners, became the property of the belligerent Government and not of individuals or units capturing them.

U. S. Manual, p. 27.

Prisoners of war are in the power of the enemy Government, and not of the individuals or units capturing them, and they must be humanely treated.

Edmonds and Oppenheim, Art. 66.

According to The Hague Rules all personal belongings of prisoners of war, except arms, horses, and military papers, remain their property. In practice personal belongings are understood to include military uniform, clothing and kit required for personal use, although technically they may be the property of Government.

This rule does not, however, authorize prisoners to retain large sums of money, or articles which might facilitate their escape. Such money and articles should be taken from them against receipt and returned at the end of the war.

This rule, further, does not compel the captor to be responsible for such personal belongings of prisoners as they are unable to take with them.

Edmonds and Oppenheim, Arts. 69–71.

All causing of physical suffering and all brutality which are not necessitated by the measures indispensable for guarding the prisoners, are positively forbidden.

Prisoners shall not be put to death without trial except in case of resistance or attempt to escape.

It shall not be permissible to put prisoners to death for the reason that guarding or maintaining them would involve serious inconvenience.

If prisoners commit crimes or acts punishable by virtue of the ordinary or military penal statutes, they shall be subject to the military jurisdictions of the capturing Nation.

Jacomet, p. 31.

The commander in chief may authorize the officers and those of assimilated rank to preserve their saber or their sword as well as the other weapons which are their private property.

However, the firearms shall not be returned to them until after they are unloaded and until their ammunition has been handed over.

The right granted to officers to keep their arms does not imply the right to carry them in captivity.

The stripping of prisoners of the money, securities, or valuables found on their person is positively forbidden.

It shall be permissible for a belligerent to deprive his prisoners temporarily of the enjoyment of the articles which remain their property, on condition of returning the articles in their entirety at the time of releasing the prisoners. This momentary seizure shall be evidenced by a receipt to be used by the prisoner later on in asserting his rights.

If the money carried by a prisoner is obviously the property of the hostile Nation, it may be confiscated; but a receipt must nevertheless be given the prisoner.

Jacomet, p. 32.

The present position of international law and the law of war on the subject of prisoners of war is based on the fundamental conception that they are the captives not of private individuals, that is to say of Commanders, Soldiers, or Detachments of Troops, but that they are the captives of the State.

German War Book, p. 90.

The prisoners of war remain in possession of their private property with the exception of arms, horses, and documents of a military purport. If for definite reasons any objects are taken away from them, then these must be kept in suitable places and restored to them at the end of their captivity.

German War Book, p. 95.

Article 4, Annex to Hague Convention IV, 1907, is substantially identical with section 154, Austro-Hungarian Manual, 1913.

"The law of war forbids the wounding, killing, impressment into the troops of the country, or the enslaving or otherwise maltreating of *prisoners of war*, unless they have been guilty of some grave crime; and from the obligation of this law no civilized state can discharge itself."

Mr. Webster, Sec. of State, to Mr. Thompson, min. to Mexico, Apr. 5, 1842, Webster's Works, VI. 427, 437.

"Prisoners of war are to be considered as unfortunate and not as criminal, and are to be treated accordingly, although the question of detention or liberation is one affecting the interest of the captor alone, and therefore one with which no other government ought to interfere in any way; yet the right to detain by no means implies the right to dispose of the prisoners at the pleasure of the captor. That right involves certain duties, among them that of providing the prisoners with the necessaries of life and abstaining from the infliction of any punishment upon them which they may not have merited by an offense against the laws of the country since they were taken."

Mr. Webster, Sec. of State, to Mr. Ellis, Feb. 26, 1842, M. S. Inst. Mex. XV. 151, Moore's Digest, vol. 7, p. 218.

Internment in unhealthy localities.

With reference to a report that a number of prisoners captured by the British troops in South Africa had been deported to Ceylon, and that among them were twenty-two men claiming American citizen-

ship, the Department of State instructed the American ambassador in London to ask an early inquiry into the truth of the statement, and said: "If it be confirmed, the Government of the United States could not view without concern the risk of life and health involved in sending any unacclimated American citizens, taken under the circumstances described, to so notoriously insalubrious a place as the island of Ceylon. The principles of public law which exclude all rigor or severity in the treatment of prisoners of war beyond what may be needful to their safety, imply their non-subjection to avoidable danger from any cause. These admitted principles have found conventional expression in treaties, as in article 24 of the treaties of 1785 and 1799 between the United States and Prussia, and the enlightened practice therein specified to be followed with respect to the custody of prisoners of war is believed to represent the general view of modern nations, as it certainly does the sentiment of humanity and the law of nature on which it claims to rest.

"If it prove that citizens of the United States, captured while temporarily serving in the armies of the South African Republic and the Orange Free State, have in fact been transported to distant and noxious places, you will represent the expectation of this Government that they be at once removed to some more healthful station, if indeed the situation at this time shall not permit their discharge, freely or on parole. The number of these Americans who have taken temporary service under another flag is represented to be small."

Moore's Digest, vol. 7, pp. 225, 226; Mr. Hay, Sec. of State, to Mr. Choate, ambass. to London, No. 468, October 16, 1900.

PRISONERS OF WAR, INTERNMENT AND CONFINEMENT OF.

Prisoners of war may be interned in a town, fortress, camp, or other place, and bound not to go beyond certain fixed limits; but they cannot be confined except as an indispensable measure of safety and only while the circumstances which necessitate the measure continue to exist.— *Article 5, Regulations, Hague Convention IV, 1907.*

Article 5, Cuban Amendment.

The Cuban delegation proposed that the conditions required by Article 5 for the internment of prisoners of war be completed by a clause stipulating that they can be confined 'only while the circumstances which necessitate the measure continue to exist.'

This addition was adopted unanimously by the subcommission and the Commission.

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," p. 522.

Prisoners of war may be interned in a town, fortress, camp, or any other locality, and bound not to go beyond certain fixed limits; but they can only be confined as an indispensable measure of safety.

Art. 5, Hague Convention II, 1899.

Article 5, respecting internment of prisoners is an exact copy of Article 24 [of the Declaration of Brussels].

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 142.

That the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise.

Treaty of Amity and Commerce between the United States and Prussia, concluded July 11, 1799, Article XXIV.

[Prisoners of war] shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs.

Treaty of Amity and Commerce between the United States and Prussia, concluded July 11, 1799, Article XXIV.

The officers shall enjoy liberty on their paroles, within convenient districts, and have comfortable quarters; and the common soldier shall be disposed in cantonments, open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for its own troops.

Treaty of Peace, Friendship, Limits, and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

Prisoners may be interned in a town, a fortress, a camp, or other place, under obligation not to go beyond certain fixed limits; but they may only be placed in confinement as an indispensable measure of safety.

Institute, 1880, p. 38.

* * * such force may be used as is necessary to secure them [prisoners of war] from escaping. Its measure is the necessity, under the circumstances of each case.

Dana's Wheaton, Note 166, par. III.

The seizure of a prisoner is the seizure of a certain portion of the resources of the enemy, and whatever is needed to deprive the latter of his resources during the continuance of the war may be done; a prisoner therefore may be subjected to such regulations and confined with such rigour as is necessary for his safe custody. Beyond this point or for any other object no severity is permissible. The enemy has been captured while performing a legal act, and his imprisonment cannot consequently be penal.

By the practice which is founded on these principles prisoners are usually interned in a fortress, barrack, or camp, where they enjoy a qualified liberty, and imprisonment in the full sense of the word is only permissible under exceptional circumstances, as after an attempt to escape, or if there is reason to expect that an attempt to escape will be made.

Hall, p. 423.

The distinction here [in Hague Regulations, article 5] is between restriction to a specified locality and close confinement.

Holland, p. 21.

In October, 1870, the German authorities had to remove five hundred Turco and Zouave prisoners from Wahn Heath near Cologne, to the citadel at Wesel, as the result of the discovery of a plot among the prisoners to effect their escape from the place of internment. During the Anglo-Boer War, Lord Roberts and the President of the S. A. Republic exchanged correspondence on the subject of the confinement of prisoners of war. The former addressed a letter to the President saying that he had learnt that Colonial troops who were captured by the Boers were treated as criminals and imprisoned in the Pretoria prison. The President denied the fact, but admitted that a small number of prisoners who had committed some offence against the laws of war and were awaiting trial, or who had either actually attempted or were suspected of the intention of attempting to escape, had been confined in the common prison as a measure of safety, but apart from the ordinary criminals. Lord Roberts expressed satisfaction with this explanation, but pointed out that the British authorities made no difference of treatment in the case of such prisoners as were suspected of wishing to escape, and that exceptions of this kind opened the door to abuses on the part of subordinates without the knowledge of the authorities. It is usual to allow a fairly wide liberty of movement to prisoners who give their parole not to attempt to escape. Officers are generally given greater privileges in this respect than prisoners of inferior rank. The

Turkish officers interned in Russia in 1877–8 and the Russian officers in Japan during the late war were allowed to lodge with private families in the villages near the internment *depôts*.

Spaight, p. 280; Despargnet, pp. 221, 222.

Article 5 relates to the internment of prisoners. There is a difference between internment and confinement; the latter is the more rigorous, and the Cuban amendment which was adopted unanimously now provides that this closer form of detention of prisoners can only be continued so long as the circumstances which necessitate the measure continue to exist.

Higgins, pp. 261, 262.

[Prisoners of war] may only be imprisoned as an unavoidable matter of safety, and only while the circumstances which necessitate the measure continue to exist. They may, therefore, be detained in a town, fortress, camp, or any other locality, and they may be bound not to go beyond a certain fixed boundary. But they may not be kept in convict prisons.

Oppenheim, vol. 2, p. 168.

Speaking generally, prisoners can only be interned; that is, restricted under proper supervision to a fortress, or camp, or indeed any reasonably healthy locality; but they may be placed in confinement as a measure of safety, and for no longer time than the necessity continues.

Lawrence, p. 400.

Concentration camps.

At the Hague in 1907 a discussion took place on the confinement of a population or portions of it in what in Cuba and South Africa were known as concentration camps, which was remarkable for the opinion expressed by the eminent Belgian delegate M. Beernaert that Arts. III and V are to be construed as covering the whole ground of internment, so that no concentration not authorised by them is allowable. I cannot subscribe to this. The articles in question only profess to relate to the armed forces of the belligerent parties.

Westlake, vol. 2, p. 67.

Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

Lieber, art. 75.

Not criminals.—The distinction herein intended is between restriction to a specified locality and close confinement. Prisoners of war must not be regarded as criminals or convicts. They are guarded as a measure of security and not of punishment.

U. S. Manual, p. 27.

Internment.—The object of internment is solely to prevent prisoners from further participation in the war. Anything, therefore, may be done that is necessary to secure this end, but nothing more. Restrictions and inconveniences are unavoidable, freedom of movement within the area of internment should be permitted unless there are special reasons to the contrary. The place selected for internment should not possess an injurious climate.

U. S. Manual, p. 28.

Where confined.—Prisoners of war when confined for security should not be placed in prisons, penitentiaries, or other places for the imprisonment of convicts, but should be confined in rooms that are clean, sanitary, and as decent as possible.

U. S. Manual, p. 28.

Prisoners of war are ordinarily interned, that is to say, they are compelled to reside in a certain town, fortress, camp, or other place. They may be bound not to go beyond certain fixed limits, obliged to respond to roll calls, and submitted to special surveillance so that any attempt at flight may be prevented.

Edmonds and Oppenheim, Art. 82.

Prisoners of war, whilst well behaved, can not be placed in close confinement except as an indispensable measure of safety, and only whilst the circumstances which necessitate that measure continue to exist.

Edmonds and Oppenheim, Art. 85.

The prisoners may be transported to a colony for the duration of the war, provided the climate is not injurious to them.

Jacomet, p. 32.

The prisoners of war have, in the places in which they are quartered, to submit to such restrictions of their liberty as are necessary for their safe keeping. They have strictly to comply with the obligation imposed upon them, not to move beyond a certain indicated boundary. These measures for their safekeeping are not to be exceeded; in particular, penal confinement, fetters, and unnecessary restrictions of freedom are only to be resorted to if particular reasons exist to justify or necessitate them.

German War Book, p. 92.

Article 5, Annex to Hague Convention IV, 1907, is substantially identical with section 155, Austro-Hungarian Manual, 1913.

PRISONERS OF WAR, LABOR AND WAGES OF.

The State may utilize the labor of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

Prisoners may be authorized to work for the public service, for private persons, or on their own account.

Work done for the State is paid for at the rates in force for work of a similar kind done by soldiers of the national army or, if there are none in force, at a rate according to the work executed.

When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.—*Article 6, Regulations, Hague Convention IV, 1907.*[1]

Article 6, Spanish and Japanese Amendments.

The Spanish delegation proposed to modify the first paragraph so as to exempt officers who are prisoners of war from being compelled to work. A German additional amendment, which was accepted by the Spanish delegation, provides, in favor of noncommissioned officers, that prisoners of war can only be employed as laborers *according to their rank* as well as according to their aptitude.

These changes were adopted without opposition, as well as an amendment proposed by Japan which provided that 'if there are no rates in force,' the work for the State must be paid for 'at a rate suitable for the work executed.'

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," p. 522.

Article 6 combines the provisions of Articles 25 and 26 [of the Declaration] of Brussels in a slightly different wording proposed by Mr. Beernaert.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 142.

Prisoners of war may be employed on certain public works which have no direct connection with the operations in the theatre of war and which are not excessive or humiliating to their military rank, if

[1] This article is substantially identical with Article 6, Regulations, Hague Convention, II, 1899, except for the addition to the first paragraph of the words "officers excepted," and for the addition to the fourth paragraph of the words "or, if there are none in force, at a rate according to the work executed."

they belong to the army, or to their official or social position, if they do not belong to it.

They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work.

Their wages shall go towards improving their position or shall be paid to them on their release. In this case the cost of maintenance may be deducted from said wages.

Art. 25, Declaration of Brussels.

Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of the war.

Art. 26, Declaration of Brussels.

They [prisoners of war] may be employed on public works which have no direct connexion with the operations in the theater of war which are not excessive and are not humiliating either to their military rank, if they belong to the army, or to their official or social position, if they do not form part thereof.

In case of their being authorized to engage in private industries, their pay for such services may be collected by the authority in charge of them. The sums so received may be employed in bettering their condition, or may be paid to them on their release, subject to deduction, if that course be deemed expedient, of the expense of their maintenance.

Institute, 1880, p. 39.

Prisoners can not be compelled in any manner to take any part whatever in the operations of war, nor compelled to give information about their country or their army.

Institute, 1880, p. 39.

Prisoners are fed and clothed at the expense of the state which holds them in captivity, and they sometimes also receive an allowance of money. The expenses thus incurred may be recouped by their employment on work suited to their grade and social position; provided that such work has no direct relation to the war. Prisoners are themselves allowed to work for hire on their own account, subject to such regulations as the military authorities may make. In principle the right of the captor appears to be sufficiently just, and labour is obviously better for the health of the men than is unoccupied leisure in a confined space; but it might be wished that their privilege were held to overrule the right of the enemy, so that they could only be compulsorily employed in default of work yielding profit to themselves.

Hall, pp. 424, 425.

Work even upon fortifications, at a distance from the scene of hostilities, would not seem to be prohibited by this article.

Under "public bodies" (*administrations publiques*) would be included, e. g., municipalities, companies, &c.

It is not customary in the British Army to charge the cost of maintenance of prisoners of war against their earnings, but reciprocity of treatment is expected from the other belligerent.

Holland, p. 22.

Military work.

"Work is an element of health and morality," and prisoners of war may be *compelled* to work by the capturing belligerent. The exemption of officers is an amendment proposed by the Spanish delegate and adopted by the Conference at the Hague in 1907. It represents Japanese practice in the war with Russia; the Russian officers were not forced to work, as the prisoners of lower rank were. The work must be suitable to the prisoners' rank and abilities and must have nothing to do with the military operation (* * * * *n'auront aucun rapport avec les operations de la guerre*). The provision as to this last point is somewhat vague. The Brussels project forbade work having "*an immediate connection* (*un rapport direct*) with the operations in the theatre of war," and the terms of the Oxford Manual (Article 71) are the same as the Brussels terms. Under the latter provision, a belligerent would certainly be entitled to employ prisoners on military works at a distance from the scene of war; this was admitted by the President and one delegate pointed out that such a provision, worded as it was, was on that account undesirable and suggested modifying it. What, exactly, the Hague Article forbids is somewhat doubtful. Professor Holland says that "work, even upon fortifications, at a distance from the scene of hostilities, would not seem to be prohibited by this paragraph," and Bluntschli held that the unwritten law of war authorised the employment of prisoners in constructing fortifications, "while the struggle is still distant." In the Crimean War, the Russian prisoners were employed in building the British military railway at Balaclava. The best modern opinion is adverse to permitting any military work whatever being exacted from prisoners. Geffcken states that "if such work is not an immediate and direct participation in the hostilities, it at least amounts to increasing the military force of the capturing State and the prisoners ought not to be forced to assist in it." Professor Pillet would admit no military work of any kind except perhaps such military sanitary services as are connected with hospitals and ambulances and are therefore more or less of a neutral character.

Spaight, pp. 281, 283; Pillet, p. 155; Brussels B. B., pp. 289, 213; Holland, *Laws and Customs of War*, p. 11; Bluntschli, sec. 608, note.

Cost of maintenance.

"In France," says the French *Manuel* (p. 75), "no deduction is made for the benefit of the State from the amount of the salary earned by a prisoner (Art. 91 and following of the Regulations of 21st March, 1893)." Against deducting the cost of maintenance from earnings is the consideration that prisoners are to be treated like the soldiers of the interning State and no such deduction would be made from the latter's working-pay. On the other hand, as the cost of maintaining the prisoners usually falls in the end upon their own Government, and as, though in captivity, they are still the servants of that Government, it is fair that their services as workmen, which are a poor substitute for their services as soldiers, should go to relieve the cost of the war to their country as far as possible. In 1877–8, the Russian Government appropriated part of the earnings of the Turkish prisoners to meet the cost of keeping them, handing over the surplus to the men.

Spaight, p. 284.

There are two slight changes in this Article [6, Hague Regulations]. The first proposed by the Spanish delegate exempts officers who are prisoners of war from being compelled to work. The second proposed by the Japanese delegate provided for cases where the laws of states make no provision for payment to prisoners of war, and says that where no schedule of rates of payment exists, the remuneration shall be proportionate to the work done.

Higgins, p. 262.

[The labor of prisoners of war], except in the case of officers, * * * * * may be utilized by the Government according to their rank and aptitude, but their tasks must not be excessive and must have nothing to do with military operations. Work done by them for the State must be paid for in accordance with tariffs in force for soldiers of the national army employed on similar tasks, or, in case there are no such tariffs in force, at rates proportional to the work executed. But prisoners of war may also be authorised to work for other branches of the public service or for private persons under conditions of employment to be settled by the military authorities, and they may likewise be authorised to work on their own account. All wages they receive go towards improving their position, and a balance must be paid to them at the time of their release, after deducting the cost of their maintenance.

Oppenheim, vol. 2, p. 168.

Military work.

While prisoners remain in the power of their captors, the state may employ the private soldiers, but not the officers, in useful work, provided that it is not excessive and has "no connection with the operations of the war." It may become a question whether these words prohibit the employment of prisoners on fortifications and other military works in the interior of the enemy country and at a distance from the scene of warfare. One side might argue that such works would not be made but for the war, and must therefore be connected with it. The other might reply that the actual hostilities took place at a distance, and therefore there could be no connection between the works and the operations of the war. On the principle that a lax rule well observed is better than a strict rule constantly evaded, the second interpretation should be preferred.

Lawrence, p. 401.

The first clause of H VI is an advance on B XXV, which said that the work required from prisoners should have no direct connection with the operations on the theatre of war. For instance, they are not now to be used in constructing fortifications even before the theater of war has reached them.

Westlake, vol. 2, p.68.

66. Work, even upon fortifications, at a distance from the scene of operations, would not seem to be prohibited by this article [6, Hague Regulations, 1907]. That the excess of money earned by prisoners, over that paid for purchasing comforts and small luxuries, can be retained by the captor in compensation for cost of maintenance, in

case their Government fails to provide for their maintenance in the treaty of peace, is well settled. The practice, however, is against such retention.

U. S. Manual, p. 29.

The State may employ the labour of prisoners of war, other than officers, according to their rank and capacity. The work must not be excessive, and must have no connection with the operations of war. Such work should be paid for at the same rates as are authorized for similar work of soldiers of that State, of if no rates are laid down, then at reasonable prices.

Prisoners may be authorized to work for municipal or other administrations, for private persons, or on their own account. In these circumstances the conditions and rates of pay must be settled in agreement with the military authorities.

The money earned by prisoners must be used, if they desire it, to purchase comforts and small luxuries. The balance can be retained but must be paid to them on their release, unless their Government refuses to refund the cost of their maintenance.

Officers who are prisoners must be given the same rate of pay as officers of corresponding rank in the army of the country where they are detained. The amount must be refunded by their own Government. There is no obligation to pay the rank and file.

Edmonds and Oppenheim, Arts. 92–95.

The utilization of prisoners on military works, even at a place remote from the theatre of war, is forbidden.

It is admitted that they may be employed, even at the theatre of operations, on certain work of a special character, such as the transportation of wounded and the burial of the dead, or in fitting up the camps intended for them.

Jacomet, p. 33.

Prisoners of war can be put to moderate work proportionate to their position in life; work is a safeguard against excesses. Also on grounds of health this is desirable. But these tasks should not be prejudicial to health nor in any way dishonorable or such as contribute directly or indirectly to the military operations against the Fatherland of the captives. Work for the State is, according to the Hague regulations, to be paid at the rates payable to members of the army of the State itself.

Should the work be done on account of other public authorities or of private persons, then the conditions will be fixed by agreement with the military authorities. The wages of the prisoners of war must be expended in the improvement of their condition, and anything that remains should be paid over to them after deducting the cost of their maintenance when they are set free. Voluntary work in order to earn extra wages is to be allowed, if there are no particular reasons against it.

German War Book, p. 93.

Article 6, Annex to Hague Convention IV, 1907, is substantially identical with section 156, Austro-Hungarian Manual, 1913.

PRISONERS OF WAR, MAINTENANCE OF.

The Government into whose hands prisoners of war have fallen is charged with their maintenance.

In the absence of a special agreement between the belligerents, prisoners of war shall be treated as regards board, lodging, and clothing on the same footing as the troops of the Government who captured them.[1]—*Article 7, Regulations. Hague Convention IV, 1907.*

Article 7 is almost the same as the old Article 27 [of the Declaration of Brussels], save that it regulates the treatment of prisoners as to *quarters* as well as to food and clothing.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 142.

Contra as to maintenance.

That the common men [prisoners of war] be . . . . . lodged in barracks as roomly and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they shall allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with or set off against any others, nor the balances due on them be withheld as a satisfaction or reprizal for any other article or for any other cause, real or pretended, whatever.

Treaty of Peace and Amity between the United States and Prussia, concluded July 11, 1799, Article XXIV.

Contra as to maintenance.

The officers shall be daily furnished, by the party in whose power they are, with as many rations, and of the same articles, as are allowed, either in kind or by commutation, to officers of equal rank in its own army; and all others shall be daily furnished with such ration as is allowed to a common soldier in its own service; the value of all which supplies shall, at the close of the war, or at periods to be agreed upon between the respective commanders, be paid by the other party, on a mutual adjustment of accounts for the subsistence of prisoners; and such accounts shall not be mingled with or set off against any others, nor the balance due on them be withheld, as a compensation or reprisal for any cause whatever, real or pretended.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

[1] This article is substantially identical with Article 7, Regulations, Hague Convention II, 1899.

The Government into whose hands prisoners of war have fallen charges itself with their maintenance.

The conditions of such maintenance may be settled by a reciprocal agreement between the belligerent parties.

In the absence of this agreement, and as a general principle, prisoners of war shall be treated as regards food and clothing, on the same footing as the troops of the Government which captured them.

Art. 27, Declaration of Brussels.

The Government into whose hands prisoners have fallen is charged with their maintenance.

In the absence of an agreement on this point between the belligerent parties, prisoners are treated, as regards food and clothing, on the same peace footing as the troops of the Government which captured them.

Institute, 1880, p. 39.

Exception.

There is no positive obligation to exchange prisoners; but the nation whose refusal prevents the exchange ought to provide for the support of its own soldiers who are prisoners.

Dana's Wheaton, Note 166, par. III.

Prisoners are fed and clothed at the expense of the state which holds them in capivity, and they sometimes also receive an allowance of money.

Hall, p. 424.

The second paragraph [of Article 7, Hague Regulations, 1907] here must, of course, be read subject to military necessities.

Holland, p. 22.

The capturing belligerent is bound to maintain the prisoners of war, but he may arrange with the other belligerent that the latter shall bear the final charge for the expenses of maintenance, either as an item in the general war indemnity or as a special repayment. Japan and Russia made such an arrangement in 1905.

Spaight, p. 284.

Prisoners are to be treated, as regards food, quarters and clothing, on the same footing as the troops of the capturing army. It may therefore happen that they fare better in captivity than in their own country and still better than their comrades who are still campaigning. Several of the delegates at Brussels wished to provide specifically that their position should not be better than that of troops serving in the war, as otherwise a premium is set upon desertion and misbehaviour. It was not, however, found possible to make the text cover such a point without sacrificing the requirement as to humane treatment. There is little doubt that so far as material comfort goes prisoners of war are far better off, under modern conditions and speaking generally, than fighting troops. Compare the position of the Turkish troops who were interned in Russia in 1877–8 and their comrades who fought through the bitter winter in the snows of the Balkans.

Spaight, p. 285; Brussels B. B., pp. 168, 214.

But whether they [prisoners of war] earn wages or not, the Government is bound under all circumstances to maintain them, and provide quarters, food, and clothing for them on the same footing as for its own troops.

Oppenheim, vol. 2, p. 168.

The government into whose hands they [prisoners of war] have fallen is bound to feed and clothe them, putting them in these respects on a level with its own troops.

Lawrence, p. 400.

Release for inability to maintain.

A commander, whose own men are on short rations, cannot be expected to feed his prisoners liberally; nor can a ragged band of victors find warm clothing for the adversaries they have taken. If they are permanently unable to maintain them, they should release them as the Boers did again and again during the latter part of their struggle against Great Britain in 1899–1902.

Lawrence, p. 403.

Contra as to maintenance.

It is believed that the wisdom of imposing upon the captor the duty of maintenance may be doubted. A state so burdened will, in proportion to the magnitude of its obligation, be inclined to incur the least possible expenditure, and will seek to accomplish that end by the exaction of the maximum of labor and the issuance of the cheapest rations, thereby placing upon the prisoner the burden of obtaining by his own excessive labor the plain necessities of life. The departure expressed in the Hague Regulations from the old practice which found expression in Article XXIV of the treaty between the United States and Prussia, of September 10, 1785, placing the burden of maintenance of both officers and men who were taken prisoners on the state to which they belonged, is not believed to have been a step forward.

C. C. Hyde, American Journal of International Law, vol. 10, p. 601.

Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

Lieber, Art. 76.

Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

Lieber, Art. 79.

Captured supplies used.—Prisoners are only entitled to what is customarily used in the captor's country, but due allowance should, if possible, be made for differences of habits, and captured supplies should be used if they are available.

U. S. Manual, p. 28.

The Government into whose hands prisoners of war have fallen is charged with their maintenance. In default of special agreement between the belligerents, prisoners of war must be given the same scale and quality of rations, quarters, and clothing as the troops of the Government which captured them.

Edmonds and Oppenheim, Art. 88.

Contra as to maintenance.

The expenses of maintenance and pay incurred by a nation in connection with prisoners of war constitute advances which are repayable upon the conclusion of peace.

Jacomet, p. 34.

The food of the prisoners must be sufficient and suitable to their rank, yet they will have to be content with the customary food of the country; luxuries which the prisoners wish to get at their own expense are to be permitted if reasons of discipline do not forbid.

German War Book, p. 95.

Article 7, Annex to Hague Convention IV, 1907, is substantially identical with section 157, Austro-Hungarian Manual, 1913.

PRISONERS OF WAR, DISCIPLINE OF—ESCAPED PRISONERS, HOW TREATED, IF RECAPTURED.

Prisoners of war shall be subject to the laws, regulations, and orders in force in the army of the State in whose power they are. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary.

Escaped prisoners who are retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them are liable to disciplinary punishment.

Prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment on account of the previous flight.[1]—*Article 8, Regulations, Hague Convention, IV, 1907.*

As has just been said, a long discussion took place on Article 28, now Article 8, especially on the subject of the *escape* of prisoners of war. Finally it was agreed, as it had been at Brussels in 1874, that an *attempt at escape* should not go entirely unpunished, but that it is desirable to limit the degree of punishment which it may entail, especially to forestall the temptation with the enemy to regard the act as similar to desertion and therefore punishable with death. Consequently it was decided that 'escaped prisoners who are retaken before being able to rejoin their army or before having left the territory occupied by the army that captured them are liable to *disciplinary punishment.*' Nevertheless, it was agreed in the course of the debate that this restriction has no application to cases where the escape of prisoners of war is accompanied by special circumstances amounting, for example, to a *plot*, a *rebellion*, or a *riot*. In such cases, as General von Voigts-Rhetz remarked at Brussels in 1874, the prisoners are punishable under the first part of the same article which says that they are 'subject to the laws, regulations, and orders in force in the army of the State in whose power they are'; and it is necessary further to supplement this provision with the one which has been taken from the old Article 23 and added to Article 8, laying down, on the subject of prisoners, that 'any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.'

Article 28 of the Brussels project provided particularly that *arms may be used, after summoning, against a prisoner of war attempting to escape*. This provision was struck out by the subcommission. In doing so, the subcommission did not deny the right to fire on an escaping prisoner of war if military regulations so provide, but it

[1] This article is substantially identical with Article 8, Regulations, Hague Convention II, 1899.

seemed that no useful purpose would be served in formally countenancing this extreme measure in the body of these articles.

Finally the subcommission retained, with some hesitation, the last paragraph of the article, by the terms of which 'prisoners who, after succeeding in escaping, are again taken prisoners, are not liable to any punishment for their previous flight.' The subcommission was influenced by the consideration that when a prisoner of war has regained his liberty his situation in fact and in law is in all respects the same as if he had never been taken prisoner. No actual penalty should therefore apply to him on account of the anterior fact.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 143.

But if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment.

Treaty of Peace and Amity between the United States and Prussia, concluded July 11, 1799, Article XXIV.

But if any officer shall break his parole by leaving the district so assigned him, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual, officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his liberty on parole or in cantonment.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

Contra.

And if any * * * common soldier so escaping from the limits assigned him, shall afterward be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established rules of war.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

Prisoners of war are subject to the laws and regulations in force in the army in whose power they are.

Arms may be used, after summoning, against a prisoner of war attempting to escape. If recaptured he is liable to disciplinary punishment or subject to a stricter surveillance.

If, after succeeding in escaping, he is again taken prisoner, he is not liable to punishment for his previous acts.

Art. 28, Declaration of Brussels.

They [prisoners of war] are subject to the laws and regulations in force in the army of the enemy. * * *

Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

Institute, 1880, p. 38.

Arms may be used, after summoning, against a prisoner attempting to escape.

If he is recaptured before being able to rejoin his own army or to quit the territory of his captor, he is only liable to disciplinary punishment, or subject to a stricter surveillance.

But if, after succeeding in escaping, he is again captured, he is not liable to punishment for his previous flight.

If, however, the fugitive so recaptured, or retaken has given his parole not to escape, he may be deprived of the rights of a prisoner of war.

Institute, 1880, pp. 38, 39.

Contra, in part.

Persons escaping from captivity and retaken, or even recaptured in war, are not held to merit punishment, for they only obeyed their law of liberty.

Woolsey, p. 216.

A belligerent may however exact obedience to rules necessary for safe custody under the sanction of punishment, and he also has the right of punishing in order to maintain discipline.

Hall, p. 423.

If a prisoner endeavours to escape, he may be killed during his flight, but if recaptured he cannot be punished, except by confinement sufficiently severe to prevent the chance of escape, because the fact of surrender as prisoner of war is not understood to imply any promise to remain in captivity.

Hall, p. 423.

Under this article [8, Hague Regulations, 1907] prisoners may be punishable, even by death, for conspiracy or revolt.

It is here understood, though not expressed, that all necessary steps, even such as may cause death, may be taken to prevent escape.

Holland, p. 23.

Prisoners of war are subject to the laws and regulations of the capturing army. The French prisoners of 1870–1 were placed under precisely the same regulations as the soldiers who guarded them, except that they got no pay unless they worked. The discipline of the German army was applied to them.

Spaight, pp. 285, 286.

"Prisoners of war," says the German Official Manual, "are subject to the laws and regulations of the country and the place in which they are confined and more especially to the dispositions governing the national troops of that country. They must be treated like the soldiers of the capturing State, no better, and no worse." And, again —"Officers who are prisoners are never the superiors of the soldiers of the capturing State but become the subordinates of those responsible for guarding them." The Russian military laws were applied to the Turkish prisoners in 1877–8, except that new dispositions were made as to punishment for disciplinary offences, to take the place of the usual forfeitures of pay or rank, which would

be inapplicable to prisoners. Article 4 of the Japanese Regulations of February, 1904, subjected the Russian prisoners to "the discipline in force in the Imperial army," and Article 25 provided for some one prisoner being told off to be responsible for the discipline of each "barrack room" and to voice the demands and complaints of his fellows. A special Imperial Decree of February, 1905, provided that the prisoners should be tried by a Council of War for infractions of law and order, in the same way as Japanese troops, and authorized special punishments for breach of parole, conspiracy, etc.

Though the Règlement does not state so expressly, it is understood that a prisoner may be prevented by violence, and by violence which may result in his death, if no less vigorous measures will suffice, from effecting his escape. The Brussels Project provided that "arms may be used, after summoning, against a prisoner attempting to escape," and the Protocol records the views of the Conference that he might be fired upon after *one* summons. This provision was suppressed by the first Hague Conference, not because it is improper to fire upon an escaping prisoner, but because it was deemed inexpedient to approve this extreme measure in the Règlement. As to whether a prisoner who has been retaken while attempting to escape may be punished therefor, there has been some difference of opinion among jurists. The *American Instructions* (Art. 77), while permitting the killing of a prisoner in flight, prescribe that "neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt to escape." Bluntschli's view is the same as Lieber's.

Spaight, p. 286; *Kriegsbrauch im Landkriege*, pp. 13 and 15; De Martens, p. 479; Ariga, pp. 94, 96, 101; Brussels B. B., pp. 169, 289; Bluntschli, sec. 609.

But if it is no crime to attempt to escape, it is an infraction of the disciplinary regulations of the capturing army, and for this, as for any other infraction, disciplinary punishment may be inflicted: not because the act punished is *malum in se*, but because it is *malum prohibitum*, to use a useful legal distinction. The Brussels Code, adopting this view, subjected a prisoner retaken in flight to "disciplinary punishment or a stricter surveillance," and the Hague Règlement, going further on the same lines, makes him liable to "disciplinary punishment" and omits the alternative mentioned in the Brussels Project. The point gave rise to a lengthy discussion at the Hague. "Finally," says the Report, "it was agreed, as it had been in 1874 at Brussels, that an attempt to escape should not go entirely unpunished, but that it is desirable to limit the degree of punishment which it may entail—especially, to prevent its being assimilated to desertion in face of the enemy and, as such, punished with death. * * * At the same time, it was agreed in the course of the discussion that this restriction does not apply to cases in which the escape is accompanied by special circumstances amounting, *e. g.*, to a conspiracy, rebellion or mutiny. In such cases, as General Voigts-Rhetz observed at Brussels in 1874, the prisoners are punishable under the first part of the same Article, which says that they are 'subject to the laws, regulations and orders in force in the army of the State in whose power they are', and this provision is supplemented by that

of the same Article VIII which lays down that "any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary'." War law, therefore, while allowing the killing of a prisoner to prevent his escaping, does not allow it as a punishment except where there has been a conspiracy or plot. Anything in the nature of concerted rebellion may be severely punished—even with death; but as regards ordinary attempts to escape on the part of prisoners who have not given their parole, these, as the German Manual points out, "must be considered as manifestations of a natural desire from freedom, not as crimes. They must therefore be repressed by a restriction of the liberty allowed and by a stricter detention, but not punished by death, which could only be inflicted in the case of formal plots, by reason of their dangerous character." Articles 7 and 8 of the Japanese Regulations of February, 1904, made prisoners recaptured while escaping liable to the summary punishments in force in the Japanese army, but especially exempted them from any "condemnation for a crime or delinquency by reason of their attempt to escape."

Spaight, p. 287; *Kriegbrauch im Landkriege*, p. 14; Ariga, pp. 94, 101.

If success crowns an attempt to escape, it has the same "whitewashing" effect as it has in the case of the spy or the revolutionary; it purges the offence and no penalty can be inflicted if the prisoner again falls into the hands of the enemy.

Spaight, p. 289.

All prisoners are subject to the laws, regulations, and orders in force in the army of the belligerent that keeps them in captivity. Any act of insubordination on the part of prisoners may be punished in accordance with these laws, but apart from these laws, all kinds of severe measures are admissible to prevent a repetition of such acts. Escaped prisoners, who, after having rejoined their national army, are again taken prisoners, are not liable to any punishment for their flight. But if they are recaptured before they succeed in rejoining their army, or before they have quitted the territory occupied by the capturing forces, they are liable to disciplinary punishment.

Oppenheim, vol. 2, p. 170.

Disciplinary measures may, of course, be taken to put down insubordination, and prevent escape. Prisoners caught in an attempt to get away may in the last resort be cut down or shot, and, if recaptured, they may be punished. But if they succeed and are able to rejoin their own army or leave the territory occupied by the army that captured them, no severity of any kind may be inflicted on them because of their escape, should they be recaptured.

Lawrence, p. 400.

The disciplinary punishment mentioned [in paragraph 3, Article VIII, Hague Regulations] is not understood to include death, but plots, rebellion or riot would bring a prisoner under the former part of the article, and the penalty of death might be incurred for them.

Westlake, vol. 2, p. 68.

A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

Lieber, art. 59.

A prisoner of war who escapes may be shot or otherwise killed in his flight; but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow prisoners or other persons.

Lieber, art. 77.

If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

Lieber, art. 78.

Prisoners of war are subject to the laws, regulations, and ordinances in force in the army which has captured them; and, in case of insubordination severe measures may be applied to them.

Art. 30, Russian Instructions, 1904.

A prisoner who has succeeded in escaping should not be punished in case he is made prisoner a second time; but the surveillance shall be made more rigorous. Escaped prisoners, who are recaptured before having rejoined their army, are merely liable to disciplinary punishment for having escaped.

Arts. 33 and 34, Russian Instructions, 1904.

Execution of.—Prisoners of war may be fired upon and may be shot down while attempting to escape, or if they resist their guard, or attempt to assist their own army in any way. They may be executed by sentence of a proper court for any offense punishable with death under the laws of the captor, after due trial and conviction. It may well be doubted whether such extreme necessity can ever arise that will compel or warrant a commander to kill his prisoners on the ground of self-preservation.

U. S. Manual, p. 29.

Trial and punishment.—For all crimes and misdemeanors, including conspiracy, mutiny, revolt, or insubordination, prisoners of war are subject to trial and punishment in the same way as soldiers of the army which captured them.

U. S. Manual, p. 29.

Conspiracy.—If a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war who are found to have plotted rebellion against the authority of the captors, whether in union with fellow prisoners or other persons.

U. S. Manual, p. 30.

Crimes committed before capture.—A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own army.

U. S. Manual, p. 30.

Escaped prisoners who are retaken before being able to rejoin their own army, or before leaving the territory occupied by the army which captured them, are liable to disciplinary punishment.

The words "disciplinary punishment" are intended to exclude a sentence of death. For conspiracy, mutiny, revolt, or insubordination, prisoners of war are, however, liable, as will be seen below, to the same punishment as persons subject to military law in the army which captured them.

Punishment for attempted escape usually consists in curtailment of the measure of liberty usually allowed to prisoners, or even of detention. If escapes are of frequent occurrence it is permitted to anticipate further attempts by increasing the measures of security.

Persons who after a successful escape are again taken prisoners of war, are not liable to any punishment on account of their previous escape.

Edmonds and Oppenheim, Arts. 75–78.

They are, however, subject to the laws, regulations, and orders in force in the army of the State in whose power they are. In the case of crimes and misdemeanors they may be tried in the same way as a soldier of that army would be. Any act of insubordination justifies the adoption towards them of such measures of severity as may be considered necessary. Such an act may vary from simple absence at roll call to an attempt at escape. Collective punishment for the offences of individual prisoners is not forbidden.

Edmonds and Oppenheim, Art. 85.

Prisoners of war should be notified of the military laws and regulations to which they are henceforth to be subject.

This notification may be validly given in the form of instructions printed in the language of the prisoners and distributed to each of them.

All crimes or misdemeanors committed by prisoners of war during their captivity fall under the jurisdiction of the military tribunals of the capturing nation.

Jacomet, p. 34.

Escape is a very natural act which is not contrary either to military honor or to the laws of morality. A prisoner who has escaped and has been recaptured under the circumstances set forth above shall

merely be subjected to a more rigorous surveillance. He may be confined in a fortress.

Jacomet, p. 35.

Prisoners of war are subject to the laws of the State which has captured them.

German War Book, p. 92.

Attempts at escape on the part of individuals who have not pledged their word of honor might be regarded as the expression of a natural impulse for liberty, and not as a crime. They are therefore to be punished by restriction of the privileges granted and a sharper supervision but not with death. But the latter punishment will follow of course in the case of plots to escape, if only because of the danger of them.

German War Book, p. 94.

Prisoners of war are subject to the laws of the country in which they find themselves, particularly the rules in force in the army of the local State; they are to be treated like one's own soldiers, neither worse nor better.

German War Book, p. 97.

Article 8, Annex to Hague Convention IV, 1907, is substantially identical with section 158, Austro-Hungarian Manual, 1913.

"On the announcement of the ratification of the treaty of Ghent there was naturally some disorder among the American prisoners of war confined at Dartmoor, near Plymouth, who were not as yet released. On April 6, 1815, there was some slight disturbance, and indications of an attempt, at least of one or two, to break loose. The captain on guard directed the alarm bell to be sounded, which caused a rush of prisoners, most of whom had no part whatever in the disorder, to the place of alarm. He then ordered the prisoners to their yards, and directed a squad of soldiers to charge them. The crowd of prisoners was great; they would not, and indeed, in the crush of the narrow passage in which they were, could not, immediately retreat; and it was said by some of the witnesses that stones were thrown from among them at the soldiers, though this last fact was negatived by a great preponderance of testimony. An order to fire was given, though by whom it was not clearly shown, and this firing, on a perfectly defenseless crowd, was continued until seven persons were killed, thirty dangerously and thirty slightly wounded. A commission consisting of Mr. F. S. Larpent, representing the British Government, and Mr. Charles King, deputed by the American mission in London, having visited the scene of action and examined into the facts, reported that 'this firing (at the outset) was justifiable in a military point of view,' but that 'it is very difficult to find any justification for the further renewal and continuance of the firing,' which is attributed to 'the state of individual irritation and exasperation on the part of the soldiers who followed the prisoners into their yards.' Lord Castlereagh, on receiving this report, expressed, on May 22, 1815, the 'disapprobation' of the Prince Regent at the conduct of the troops, and his desire 'to make a compensation to the

widows and families of the sufferers.' Mr. Monroe, Secretary of State, on being informed of this action, sent, on December 11, 1815, to Mr. Baker, British chargé d'affaires at Washington, a note in which he said: 'It is painful to touch on this unfortunate event, from the deep distress it has caused to the whole American people. This repugnance is increased by the consideration that our Governments, though penetrated with regret, do not agree in sentiment respecting the conduct of the parties engaged in it. Whilst the President declines accepting the provision contemplated by His Royal Highness the Prince Regent, he nevertheless does full justice to the motives which dictated it.'"

Wharton, Int. Law Digest Sec. 348c, III, 331, citing 4 Am. State Papers, For. Rel., p. 2 et seq, quoted in Moore's Digest, vol. 7, p. 219.

PRISONERS OF WAR, INFORMATION THEY ARE BOUND TO GIVE.

Every prisoner of war is bound to give, if he is questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to have the advantages given to prisoners of his class curtailed.[1]—*Article 9, Regulations, Hague Convention IV, 1907.*

Article 9 repeats literally Article 29 [of the Declaration of Brussels] on the declaration of name and rank.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 142.

Every prisoner is bound to give, if questioned on the subject, his true name and rank. Should he fail to do so, he may be deprived of all, or a part, of the advantages accorded to prisoners of his class.

Institute, 1880, p. 38.

Questions and answers on other subjects.

A prisoner is bound to declare his proper name and rank. No mention is made of disciplinary punishment being inflicted if he declines to do so, and presumably the effect of Article IX is to put officers and non-commissioned officers who refuse to state their names and rank on the same footing as privates. Prisoners cannot, however, forfeit any of the privileges of their rank for refusing to give information on other subjects; still less may they be tortured in order to extract information from them, as was once the practice. Prisoners often constitute a valuable source of information of which an enemy would be quixotic to fail to take advantage. There is nothing to forbid his rewarding an obligingly garrulous prisoner, but he must not penalise one who refuses to state anything more than what this Article requires. "This Article," says Professor Ariga, "determines the subjects on which prisoners must reply and the punishment to be inflicted if they disobey, but it does not imply that these are the only subjects on which the enemy may question them. The army which has captured a prisoner may quite properly employ all means, provided they are humane, to obtain from him as much information as possible regarding the enemy's movements. That is what we did, as may be seen from the voluminous depositions of prisoners preserved in the archives of each army corps operating in Manchuria. We do not think that it will ever be possible to limit the liberty of action of an army in the field, by limiting the right to question prisoners of war."

Spaight, p. 289; Ariga, pp. 105, 106.

[1] This article is substantially identical with Article 9, Regulations, Hague Convention II, 1899.

Every prisoner who, if questioned, does not declare his true name and rank is liable to a curtailment of the advantages accorded to prisoners of his class.

Oppenheim, vol. 2, p. 169.

A prisoner of war is in honor bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

Lieber, Art. 107.

Information concerning their own army.

Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information.

Lieber, Art. 80.

Every prisoner is bound to declare his true name and rank; in case of violation of this rule he must submit to a restriction of the privileges reserved for prisoners of his class.

Art. 29, Russian Instructions, 1904.

Questions and answers on other subjects.

Although a prisoner of war is bound, under the penalties named, to state truthfully his name and rank, yet he is not bound to reply to other questions. The captor is entitled to take advantage of every means, humane and not coercive, in order to obtain all information possible from a prisoner with regard to the numbers, movements, and location of the enemy, but the prisoner can not be punished for giving false information about his own army.

U. S. Manual, p. 27.

Every prisoner is bound to give, if questioned on the subject, his true name and rank. In case he refuses to do so, he is liable to have the privileges curtailed which are due to prisoners of his class.

Edmonds and Oppenheim, Art. 67.

Article 9, Annex to Hague Convention IV, 1907, is substantially identical with section 159, Austro-Hungarian Manual, 1913.

PRISONERS OF WAR, CONDITIONS ON WHICH PAROLED—OBLIGATIONS OF THEIR GOVERNMENT TOWARDS PAROLED PRISONERS.

Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by whom they were made prisoners, the engagements they have contracted.

In such cases their own Government is bound neither to require of nor accept from them any service incompatible with the parole given.[1]—*Article 10, Regulations, Hague Convention IV, 1907.*

Articles 10, 11, and 12 concerning *liberation on parole* are, except as to a few details of wording, the same as Articles 31, 32, and 33 of the Declaration of Brussels.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 143.

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honor, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted.

In such cases their own Government ought neither to require of nor accept from them any service incompatible with the parole given.

Art. 31, Declaration of Brussels.

Prisoners may be set at liberty on parole, if the laws of their country do not forbid it.

In this case they are bound, on their personal honor, scrupulously to fulfil the engagements which they have freely contracted, and which should be clearly specified. On its part, their own government should not demand or accept from them any service incompatible with the parole given.

Institute, 1880, p. 40.

Conditions that may be imposed.

Sometimes, prisoners of war are permitted to resume their liberty, upon the condition that they will not again take up arms against their captors, either for a limited time, or during the continuance of the war, or until duly exchanged. Officers are very frequently released upon their *parole*, subject to the same conditions. Such agreements made by officers for themselves, or by a commander for his troops, are valid, and cannot be annulled by the state to which they belong. Agreements of this kind come within the necessary

[1] This article is substantially identical with Article 10, Regulations, Hague Convention II, 1899.

limits of the implied powers of the commander, and are obligatory upon the state.. * * * It will be shown hereafter that there are certain limits to the conditions which the captor may impose on the release of prisoners of war, and to the stipulations which an officer is authorized to enter into, either for himself or for his troops. The captor may impose the condition that the prisoners shall not take up arms against him, either for a limited period or during the war; but he cannot require them to renounce forever the right to bear arms against him; nor can they, on their part, enter into any engagements inconsistent with their character and duties as citizens and subjects. Such engagements made by them would not be binding upon their sovereign or state. The reason of this limitation is obvious: the captor has the absolute right to keep his prisoners in confinement till the termination of the war; but on the conclusion of peace he would no longer have any reasons for detaining them. They, therefore, have the right to stipulate for their conduct during that period, but not beyond the time when they would have been released had no agreement been entered into. Nor can the captor generally impose conditions which extend beyond the period when the prisoners would necessarily be entitled to their liberty. Beyond this, their services are due to, and at the disposition of, the state to which they owe allegiance, and they have no right to limit them by contracts with a foreign power.

Halleck, p. 433.

Sometimes prisoners of war are permitted, by capitulation, to return to their own country, upon condition not to serve again during the war, or until duly exchanged; and officers are frequently released upon their parole, subject to the same condition. Good faith and humanity ought to preside over the execution of these compacts, which are designed to mitigate the evils of war, without defeating its legitimate purposes. By the modern usage of nations, commissaries are permitted to reside in the respective belligerent countries, to negotiate and carry into effect the arrangements necessary for this object. Breach of good faith in these transactions can be punished only by withholding from the party guilty of such violation the advantages stipulated by the cartel; or, in cases which may be supposed to warrant such a resort, by reprisals or vindictive retaliation.

Dana's Wheaton, p. 430.

Officers and others, whose word can be relied on, are often set free, on their parole not to serve during the war or until ransomed.

Woolsey, p. 216.

Exchange of prisoners.

Prisoners are generally exchanged within the same rank man for man, and a sum of money or other equivalent is paid for an excess of them on one side.

Woolsey, p. 255.

Prisoners are often released from confinement or are dismissed to their own country on pledging their parole, or word of honour, to observe conditions which render them innocuous to their enemy. They are allowed to live freely within a specified district on under-

taking not to pass the assigned bounds, or they return home on giving their word not to serve against the captor for a stated time or during the continuance of the war.

Hall, p. 425.

So also non-commissioned officers and privates, who are not supposed to be able to judge of the manner in which their acceptance of freedom upon parole may touch the interests of their country, are not allowed to pledge themselves, except through an officer, and even officers, so long as a superior is within reach, can only give their word with his permission. Finally, the government of the state to which the prisoners belong may refuse to confirm the agreement, when made; and if this is done they are bound to return to captivity, and their government is equally bound to permit, or if necessary to enable, them to do so.

The terms upon which prisoners may be paroled are naturally defined by the character of the rights which their captor possesses over them. By keeping them in confinement he may prevent them from rendering service to their state until after the conclusion of peace. He may therefore in strictness require them to abstain not only from acts connected with the war, but also from engaging in any public employment. Generally however, a belligerent contents himself with a pledge that his prisoner, unless exchanged, will not serve during the existing war against the captor or his allies engaged in the same war. This pledge is understood to refer only to active service in the field, and does not therefore debar prisoners from performing military duties of any kind at places not within the seat of actual hostilities, notwithstanding that the services thus rendered may have a direct effect in increasing the power of the country for resistance or aggression. Thus paroled prisoners may raise and drill recruits, they may fortify places not yet within the scope of military operations, and they may be employed in the administrative departments of the army away from the seat of war. As the right of a belligerent over his prisoners is limited to the bare power of keeping them in safe custody for the duration of the war, he cannot in paroling them make stipulations which are inconsistent with their duties as subjects, or which shall continue to operate after the conclusion of peace. Thus if prisoners are liberated on condition of not serving during a specified period, before the end of which peace is concluded and hostilities again break out, they enter upon the fresh war discharged from obligation to the enemy.

Hall, p. 425.

It was formerly the practice for the state to leave to each prisoner, at least during the war, the care of redeeming himself, and the captor had a lawful right to demand a ransom for the release of his prisoners. The present usage of civilized nations is, however, to exchange prisoners of war or to release them on their parole or word of honor not to serve against the captor again for a definite period, during the war, or till properly exchanged. An agreement between belligerents for the exchange (and formerly for the ransom) of prisoners of war is called a cartel, and a vessel commissioned for the exchange of prisoners of war or to carry proposals from one belligerent to the other under a flag of truce is sometimes called a cartel ship.

Moore's Digest, vol. 7, p. 226.

In the British Army only commissioned officers are allowed to give their parole for themselves or their men. The parole must not go further than a promise not to serve during the war which at the time is in progress.

Holland, p. 23.

Regulations of various armies.

A parole is a voluntary contract made between the captor and his prisoner, by which the latter obtains his freedom under certain conditions—usually on condition of not serving against his captor during the existing war.

The army regulations of some countries place restrictions on the powers of officers as regards the giving of their parole. French officers are now forbidden (by a Decree of 1891) to separate themselves from their men, whom they must consequently accompany into captivity; and Russian officers cannot give their parole save with the sanction of the Czar. In 1905, the officers of the Port Arthur garrison were permitted by General Baron Nogi to telegraph to the Czar asking for his authority to their returning to Russia on parole; the authority was given and over 500 officers availed themselves of it. In Austria, officers and men are forbidden to give their parole. In the British army, only commissioned officers are allowed to give their parole for themselves and their men. The American Instructions also allow only officers to give their parole, "and they can give it only with the permission of their superior, so long as a superior in rank is within reach." The form of the parole varies.

Spaight, p. 290; Bonfils, sec. 1267; Aiiga, p. 322; Holland, *Laws and Customs of War*, p. 14; *American Instructions*, art. 126.

French practice.

The French *Manuel* (p. 78) states that the promise not to serve again during the campaign "extends to active service against the belligerent and his allies during the same war, but not to internal service; prisoners liberated on such a parole may therefore be employed in their country in instructing recruits in depôts, in working on fortifications of places not besieged, in maintaining public order, in fighting against other enemies, in fulfilling civil functions or diplomatic missions."

Spaight, p. 292.

Generally only officers or civil officials of corresponding status are released on parole; but sometimes in special circumstances, the rank and file are allowed the privilege as well.

Spaight, p. 292.

That Article states that "prisoners of war may be set at liberty on parole *if the laws of their country allow*" and in such circumstances—and presumably *only* in such circumstances—the Government of the released prisoners must recognise the parole. The releasing belligerent is bound to satisfy himself that his prisoners are not acting *ultra vires* in giving their parole; if he does not do so, he must be prepared to have them returned to him by their own Government for internment as prisoners of war. But as regards the released prisoner himself, "whatever are the circumstances, he who has given his

parole is bound to keep it. He disqualifies himself if he fails to do so and is punishable if he is captured, even if his own Government has prevented his fulfilling his obligation."

Spaight, p. 296; *Kriegsbrauch im Landkriege*, pp. 17, 18.

If the laws of his country authorise him to do so, and if he acquiesces, any prisoner may be released on parole. In such case he is in honour bound scrupulously to fulfil the engagement he has contracted, both as regards his own Government and the Government that released him. And his own Government is formally bound neither to request, nor to accept, from him any service incompatible with the parole given.

Oppenheim, vol. 2, p. 170.

Officers have been frequently released on parole, that is to say, after pledging their word of honor not to serve again during the existing war against their captor or his allies, and occasionally the benefit of this practice has been extended to the rank and file.

Lawrence, p. 398.

They may be set at liberty on parole, if the laws of their country allow them to pledge their word in exchange for freedom; but in such a case their own government must neither require nor accept from them any service incompatible with the parole given.

Lawrence, p. 400.

The usual terms [of a parole] are that the prisoner, unless exchanged, will not serve during the existing war against the captor or his allies engaged in the same war; and this is understood to refer only to active service in the field, and not to debar the paroled prisoners from performing military or administrative duties of any kind at places not within the seat of actual hostilities. The parole is in any case terminated by the conclusion of peace, and if it was given for a specified period, during which peace is concluded and war again breaks out, its obligation will not revive.

Westlake, vol. 2, p. 69.

Limitation as to noncommissioned officers and privates.

No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

Lieber, art. 127.

Limitations as to paroling.

No paroling on the battlefield; no paroling of entire bodies of troops after a battle; and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value.

Lieber, art. 128.

A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

Lieber, art. 132.

Liberation on Parole is an essentially individual act. A pledge signed by a superior for his subordinates shall not be valid with respect to any of them until indorsed by them.

The contract of release on parole must be made in writing, being drawn up in duplicate in a language understood by the liberated prisoner.

The word of a prisoner can not be validly given on the field of battle, it being considered that combatants have not sufficient freedom of mind during action to contract such a pledge validly.

Jacomet, p. 36.

It is understood that the reservation made above with respect to the legislation of one of the belligerents can bind only the citizens of that belligerent and not the Government of the adversary nation.

A belligerent who grants liberty on parole to prisoners of war need not concern himself to ascertain whether the laws of the country to which the prisoners belong authorize them to accept such liberty.

Jacomet, p. 36.

Their government is bound by these obligations even if its laws and regulations prohibit freedom on parole, but it has the right to inflict upon its nationals who may have accepted their freedom on parole authorized punishments for violations of laws in force or else make them return to the enemy.

If liberty on parole is disavowed by his government his duty is to return himself to captivity, but if the enemy refuse to receive him or to relieve him of his parole, the prisoner is bound to conform to the agreements he has entered into.

Jacomet, p. 36.

The parole should be in writing and be signed by the prisoners. The conditions thereof should be distinctly stated, so as to fix as definitely as possible exactly what acts the prisoner must refrain from doing; that is, whether he is bound to refrain from all acts against the captor or whether he must refrain only from taking part directly in military operations against the captor, and may accept office and render indirect aid or assistance to his own government.

U. S. Manual, p. 30.

Limitations as to noncommissioned officers and privates.

No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals properly separated from their commands have suffered long confinement without the possibility of being paroled through an officer.

U. S. Manual, p. 30.

Commissioned officers.

Commissioned officers can give their parole only with the permission of a military superior, as long as such superior in rank is within reach.

U. S. Manual, p. 31.

Limitations as to paroling.

No paroling on the battle field, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted or of any value.

U. S. Manual, p. 31.

A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

U. S. Manual, p. 31.

Prisoners of war may be set at liberty on parole, if the laws of their country allow it. In such cases they are bound, on their personal honour, scrupulously to fulfil, both as regards their own Government and the enemy Government, the engagements they may have contracted, and their own Government is bound neither to require of nor to accept from them any service incompatible with the parole given.

Edmonds and Oppenheim, art. 96.

A man released under certain conditions has to fulfil them without question. If he does not do this, and again falls into the hands of his enemy, then he must expect to be dealt with by military law, and indeed according to circumstances with the punishment of death.

German War Book, p. 100.

According to the Hague Regulations a Government can demand no services which are in conflict with a man's parole.

German War Book, p. 101.

The question whether the parole given by an officer or a soldier is recognized as binding or not by his own State depends on whether the legislation or even the military instructions permit or forbid the giving of one's parole. In the first case his own State must not command him to do services the performance of which he has pledged himself not to undertake.

German War Book, p. 101.

Article 10, Annex to Hague Convention IV, 1907, is substantially identical with section 160, Austro-Hungarian Manual, 1913.

"In pursuance of the suggestion made by General Lee, the Department asked for the issuance of instructions that you be released from imprisonment on the condition that you would leave the Island of Cuba and not return until the present war is terminated. Upon your signing an agreement to that effect you were released. The Department regards the condition of your release as a binding parole engagement between yourself and the Government of Spain for the infringement of which you would alone be responsible."

Mr. Sherman, Sec. of State, to Mr. Sanguily, Feb. 1, 1898, Moore's Digest, vol. 7, p. 230.

PAROLING NOT OBLIGATORY ON PRISONER OR CAPTOR.

A prisoner of war can not be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.[1]—*Article 11, Regulations, Hague Convention IV, 1907.*

A prisoner cannot be compelled to accept his liberty on parole. Similarly, the hostile government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

Institute, 1880, p. 40.

The release of prisoners in this manner is not necessarily an act of grace on the part of the captor; for it may often occur that his willingness to parole them may be caused by motives of convenience or by serious political or military reasons. Hence prisoners cannot be forced to give their parole, and their dismissal with a simple declaration by the enemy that they are paroled affects them with no obligation.

Hall, p. 425.

The giving and acceptance of parole being facultative on both sides, it is essential to the validity of the contract that the released prisoners should be consenting parties thereto. "Every release of a prisoner on parole must be free, whether it is a question of an officer or of a soldier; thus a State has not the right, in order to free itself of its prisoners, to send them back on condition of not serving again, if they have not agreed to this condition, and this agreement must emanate from the interested parties themselves." "No dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value." Everything connected with paroling must be done carefully, cautiously, and in proper form; it must be perfectly clear to the prisoners what they are undertaking, and there must be no misunderstanding on either side as to the nature and consequences of the undertaking entered into.

Spaight, p. 298; Pillet, p. 159; *American Instructions*, art. 128.

"In the British army only commissioned officers are allowed to give their parole for themselves or their men": Holland, *Laws and Customs of War on Land*, p. 14. "And even officers, so long as a superior is within reach, can only give their word with his permission. Finally, the government of the state to which the prisoners belong may refuse to confirm the agreement when made; and if this is done they are bound to return to captivity, and their government is equally bound to permit, or if necessary to enable, them to do so." Hall, sec. 133.

The terms of the parole are a matter of contract, as will be seen to result from H XI.

Westlake, vol. 2, p. 69.

[1] This article is substantially identical with Article I, Regulations, Hague Convention II, 1899, and Article 32, Declaration of Brussels.

A prisoner of war cannot be compelled to accept his liberty on parole, nor is the hostile Government compelled to accede to the request of a prisoner to be set at liberty on parole.

Edmonds and Oppenheim, Art. 100.

A conditional release cannot be imposed on the captive; still less is there any obligation upon the state to discharge a prisoner on conditions—for example, on his parole. The release depends entirely on the discretion of the State, as does also the determination of its limits and the persons to whom it shall apply.

German War Book, p. 100.

Article 11, Annex to Hague Convention IV, 1907, is substantially identical with section 161, Austro-Hungarian Manual, 1913.

PAROLED PRISONERS BREAKING THEIR PLEDGES, HOW TREATED.

Prisoners of war liberated on parole and recaptured bearing arms against the Government to whom they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war, and can be brought before the Courts.[1]—*Article 12, Regulations, Hague Convention IV, 1907.*

And if any officer so breaking his parole [not to leave a district assigned him] * * *, shall afterward be found in arms, previously to his being regularly exchanged, the person so offending shall be dealt with according to the established rules of war.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

Any prisoner of war liberated on parole and recaptured bearing arms against the Government to which he had pledged his honor may be deprived of the rights accorded to prisoners of war and brought before the courts.

Art. 33, Declaration of Brussels.

Any prisoner liberated on parole and recaptured bearing arms against the government to which he had given such parole may be deprived of his rights as a prisoner of war—unless since his liberation he has been included in an unconditional exchange of prisoners.

Institute, 1880, p. 40.

It has been held that the recaptured prisoner who has violated parole may be punished by death * * * Still, the modern practice usually is to abstain from the infliction of death, except in an aggravated case, and to substitute strict confinement, with severities and privations not cruel in their nature or degree.

Dana's Wheaton, note 166, par. III.

* * * but the breach of parole justly subjects such persons [escaped prisoners] to heavy punishment.

Woolsey, p. 216.

A prisoner who violates the conditions upon which he has been paroled is punishable with death if he falls into the hands of the enemy before the termination of the war.

Hall, p. 426.

[1] This article is substantially identical with Article 12, Regulations, Hague Convention II, 1899, and with Article 33, Declaration of Brussels.

Punishment for breach of parole.

The question of punishment for breach of parole is ably discussed by Professor Takahashi, of the Imperial Naval Staff College of Japan, in his work on the Chino-Japanese war. He examines the case of one George Cameron, an American in the service of China, who was captured by the Japanese and released on taking an oath not to serve the Chinese Government during the war. He broke his parole and was recaptured at the surrender of Admiral Ting's fleet. "Some of the naval officers insisted on putting him to death, quoting many instances in European countries." One such case was that of Colonel Hayne, an officer who was hanged in S. Carolina during the American Revolutionary War for breaking his parole. Colonel Hayne's case was discussed in the House of Lords in February, 1782. On the one side it was affirmed that hanging was the usual and proper punishment for a parole breaker, and that Earl Cornwallis had followed such a procedure during his command in America. On the other hand, the Earl of Shelburne asserted of his personal knowledge that "the practice in the last war had been totally different. A greater degree of ignominy, perhaps a stricter confinement, was the consequence of such an action as breach of parole; the persons guilty of it were shunned by gentlemen, but it had never before entered into the mind of a commander to hang them." Cameron was not executed; he was sent back to Japan and imprisoned until the end of the war, when he was released.

Spaight, p. 296; Takahashi, pp. pp. 136–142.

Should they break their word of honor, and be recaptured while serving again, they have no claim to the treatment of prisoners of war, but may be put on trial before a military court. Such courts may inflict the death penalty, though the Hague Code does not go so far as to suggest that they should.

Lawrence, p. 400.

Any prisoner released on parole and recaptured bearing arms against the belligerent who released him, or against such belligerent's allies, forfeits the privilege to be treated as a prisoner of war, and may be tried by court-martial. The Hague Regulations do not lay down the punishment for such breach of parole, but according to a customary rule of International Law the punishment may be capital.

Oppenheim, vol. 2, p. 170.

These [the courts referred to in Article 12, Hague Regulations,] are the military courts.

Westlake, vol. 2, p. 70.

Art. 204, Sec. 2 of the [French] military code of justice: "Every prisoner of war who, having broken his parole, is recaptured with arms in hand, is punished with death."

Jacomet, p. 37.

In case of a breach of a man's parole the punishment of death may reasonably be incurred.

German War Book, p. 95.

But personally the man released on parole is under all circumstances bound to observe it. He destroys his honor if he breaks his word, and is liable to punishment if recaptured, even though he has been hindered by his own State from keeping it.

German War Book, p. 101.

Article 12, Annex to Hague Convention IV, 1907, is substantially identical with section 162, Austro-Hungarian Manual, 1913.

ARMY FOLLOWERS, HOW TREATED, IF CAPTURED.

Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.[1]—*Article 13, Regulations, Hague Convention IV, 1907.*

Article 34 [of the Declaration of Brussels] now Article 13 of the draft of the subcommission, has also undergone considerable change. The old wording was especially wanting in clearness as it seemed to say that the persons meant who accompany the army without being a part of it (such as newspaper correspondents, sutlers, contractors, etc.) shall be made prisoners if they are provided with regular permits. Accordingly it would be literally sufficient in order to be left free not to have the regular permit.

Such certainly is not the meaning of this provision. The subcommission consequently adopted at the suggestion of the reporter a more precise wording which closely follows the text of Article 22 of the manual of the laws of war on land of the Institute of International Law. This text keeps in sight the fact that these persons can not really be considered as prisoners of war at all. But it may be necessary to *detain* them either temporarily or until the end of the war and in this case it will certainly be advantageous for them to be treated like prisoners of war. Nevertheless, they can depend upon obtaining this advantage only if they are 'in possession of a certificate from the military authorities of the army they were accompanying.'

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 143.

Individuals in the vicinity of armies but not directly forming part of them, such as correspondents, newspaper reporters, sutlers, contractors, etc., etc., can also be made prisoners. These prisoners should however be in possession of a permit issued by the competent authority and of a certificate of identity.

Art. 34, Declaration of Brussels.

Individuals who accompany an army, but who are not a part of the regular armed force of the state, such as correspondents, traders, sutlers, etc., and who fall into the hands of the enemy, may be detained for such length of time only as is warranted by strict military necessity.

Institute, 1880, p. 31.

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[1] This article is substantially identical with Article 13, Regulations, Hague Convention II, 1899.

All persons whom a belligerent may kill become his prisoners of war on surrendering or being captured. But as the right to hold an enemy prisoner is a mild way of exercising the general rights of violence against his person, a belligerent has not come under an obligation to restrict its use within limits so narrow as those which confine the right to kill. He may capture all persons who are separated from the mass of non-combatants by their importance in the enemy's state, or by their usefulness to him in his war. Under the first of these heads fall the sovereign and the members of his family when non-combatants, the ministers and high officers of government, diplomatic agents, and any one who for special reasons may be of importance at a particular moment. Persons belonging to the auxiliary departments of an army, whether permanently or temporarily employed, such as commissariat employés, military police, guides, balloonists, messengers, and telegraphists, when not offering resistance on being attacked by mistake, or defending themselves personally during an attack made upon the combatant portions of the army, in which case they become prisoners of war as combatants, are still liable to capture, together with contractors and every one present with a force on business connected with it, on the ground of the direct services which they are engaged in rendering.

Hall, p. 420.

Foreign attachés and correspondents.

Foreign officers acting as *attachés* or as correspondents, are bound to take no part in directing the movements of the army which they follow, and if shown to have so acted will be treated as prisoners of war. If their conduct has been in conformity with the obligations of neutrality, they may be released and afforded facilities for returning to their country, on condition that they do not, without the consent of the capturing belligerent, rejoin their posts until the conclusion of the war.

Holland, p. 24.

As was pointed out by the Italian delegate at Brussels, there is a difference between the ordinary prisoners of war and those referred to in the present Article XIII. The latter are captured, not to weaken the enemy, but to prevent their returning to the hostile camp after examining the position and seeing the forces of the other belligerent. No measure beyond what is necessary to prevent their escape should, therefore, be applied to these persons. They should neither be subjected to forced labour nor should the captor's military laws and regulations be applied to them. On the other hand, it might be required that they should pay for their own maintenance. The Committee of the Conference recorded these views of the Italian delegate in the Protocol.

Spaight, p. 310; Brussels B. B., p. 289.

Usually it is not to a belligerent's advantage to treat correspondents, etc., as prisoners of war, a temporary detention and release by a circuitous route being sufficient to safeguard military interests, but it is important that such persons should have the war right given to them by this Article, if the capturing commander finds it necessary to detain

them. All that the Article lays down is that if they are captured, they are entitled to the privileges of prisoners of war. On the other hand, they cannot be assimilated to surgeons and allowed the right of neutrality, as an abortive proposal at the Brussels Conference would have laid down.

Spaight, p. 311; Brussels B. B., p. 260.

Enemy sovereign and important officials.

The head of the enemy State and officials in important posts, in case they do not belong to the armed forces, occupy, so far as their liability to direct attack, death, or wounds is concerned, a position similar to that of private enemy persons. But they are so important to the enemy State, and they may be so useful to the enemy and so dangerous to the invading forces, that they may certainly be made prisoners of war. If a belligerent succeeds in obtaining possession of the head of the enemy State or its Cabinet Ministers, he will certainly remove them into captivity. And he may do the same with diplomatic agents and other officials of importance, because by weakening the enemy Government he may thereby influence the enemy to agree to terms of peace.

Oppenheim, vol. 2, pp. 153, 154.

Every individual who is deprived of his liberty not for a crime but for military reasons has a claim to be treated as a prisoner of war. Article 13 of the Hague Regulations expressly enacts that non-combatant members of armed forces, such as newspaper correspondents, reporters, sutlers, contractors, who are captured and detained, may claim to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they were accompanying. But although the Hague Regulations do not contain anything regarding the treatment of private enemy individuals and enemy officials whom a belligerent thinks it necessary to make prisoners of war, it is evident that they may claim all privileges of such prisoners. Such individuals are not convicts; they are taken into captivity for military reasons, and they are therefore prisoners of war.

Oppenheim, vol. 2, p. 169.

Persons entitled to be treated as prisoners of war.

There are numerous persons who, in the words of Article XIII of the Hague Regulations respecting the Laws and Customs of War on Land, "follow an army without directly belonging to it." The Article goes on to mention "newspaper correspondents and reporters, sutlers and contractors," but only as examples. It makes no attempt to give a complete list; and we can see at once that many classes of persons besides those enumerated come within the terms of the general description. Members of a royal family who took the field would as a rule hold military rank; but it is conceivable that a prince who had never entered the army might nevertheless accompany it in the crisis of a campaign. A minister of state, too, might find himself on a battlefield, though in ordinary life he was the most peaceful of civilians. All these exalted personages would be following the army without directly belonging to it, as truly as the meanest pedler who sold fruit and sweetmeats to the soldiers. They would therefore be liable to detention if they fell into the enemy's hands. He would keep them

or free them at his discretion. But Article XIII of the Hague Regulations stipulates that, if they are detained, they "are entitled to be treated as prisoners of war, provided that they are in possession of a certificate from the military authorities of the army they were accompanying." This last proviso was made to fit the case of such persons as foreign attachés or newspaper correspondents, who have no business to be with an army at all unless they have obtained special permission to accompany it. It is hardly applicable to prime ministers or petty traders, who are respectively too great and too humble to need formal certificates. We may safely say that any non-military persons who are detained must be treated with humanity, and those of them who cannot be regarded as undesirables, to be got rid of as soon as possible, are entitled to the consideration due to prisoners of war.

Lawrence, pp. 370, 371.

The public armed forces of the enemy are not the only persons who may be made prisoners of war. Those who follow an army without belonging to it, such as newspaper correspondents, sutlers, and contractors, may be detained, if the enemy thinks fit to do so. In that case they have a right to the treatment accorded to prisoners of war, if they can produce a certificate from the military authorities of the army that they were accompanying. We are not told what is to happen to them when they have no such certificate and their detention is deemed advisable. They should certainly be treated with humanity. In practice the alternative lies between a more or less rough dismissal and what is now the privileged position of prisoners of war. Members of the enemy's royal family, his chief ministers of state, and his diplomatic agents, would doubtless be captured if found in the theatre of hostilities.

Lawrence, p. 399.

Foreign attachés and correspondents.

Foreign officers acting as *attachés* or as correspondents are bound by the neutrality of their own state to take no part in directing the movements of the army which they follow.

Westlake, vol. 2, p. 70.

Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

Lieber, art. 50.

If made prisoners and it is found necessary to detain them, newspaper correspondents, sutlers, contractors, etc., who are provided with certificates from the military authorities of the army to which they are attached, shall enjoy the rights of prisoners of war.

Art. 26, Russian Instructions, 1904.

It is expressly enacted that followers of armies—such as newspaper correspondents, reporters, sutlers, and contractors—who are captured and retained, can claim to be treated as prisoners of war, provided they can produce a certificate from the military authorities of the army they are accompanying.

Edmonds and Oppenheim, art. 57.

According to the notions of the laws of war today the following persons are to be treated as prisoners of war:

* * * * * * *

4. All civilians staying with the army, with the approval of its Commanders, such as transport, sutlers, contractors, newspaper correspondents, and the like.

German War Book, p. 91.

In the train of an army it is usual to find, temporarily or permanently, a mass of civilians who are indispensable to the satisfaction of the wants of officers and soldiers or to the connection of the army with the native population. To this category belong all kinds of contractors, carriers of charitable gifts, artists, and the like, and, above all, newspaper correspondents whether native or foreign. If they fall into the hands of the enemy, they have the right, should their detention appear desirable, to be treated as prisoners of war, assuming that they are in possession of an adequate authorization.

For all these individuals, therefore, the possession of a pass issued by the military authorities concerned, in accordance with the forms required by international intercourse, is an indispensable necessity, in order that in the case of a brush with the enemy, or of their being taken captive they may be recognized as occupying a passive position and may not be treated as spies.

German War Book, p. 128.

Article 13, Annex to Hague Convention IV, 1907, is substantially identical with section 163, Austro-Hungarian Manual, 1913.

War correspondents.

February 10, 1904, the Japanese Government, on the outbreak of war with Russia, published regulations which required war correspondents who wished to follow the Japanese army to make application to the Japanese war department. The applications of foreign correspondents were required to be sent through their respective ministers or consuls and the department of foreign affairs. The officers of the army were required to accord to correspondents, as far as circumstances permitted, suitable treatment and facilities, and when in the field and in case of necessity to give them food or, when so requested, transportation in vessels or vehicles. A war correspondent violating the criminal law, military criminal law, or the law for the preservation of military secrets was to be adjudged and punished by court-martial according to the military penal code.

Moore's Digest, vol. 7, pp. 176, 177, For. Rel. 1904, 415.

Contra; as to the right of detention.

"There would be no meaning in that well-settled principle of the law of nations which exempts men of letters and other classes of non-combatants from the liability of being made prisoners of war, if it were an answer to every claim for such exemption to say that the person making it was united with a military force, or journeying under its protection."

Mr. Webster, Sec. of State, to Mr. Thompson, Apr. 5, 1842, 6 Webster's Works, 427, 432.

INQUIRY OFFICE FOR PRISONERS OF WAR, FUNCTIONS OF.

An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States, and, when necessary, in neutral countries which have received belligerents in their territory. It is the function of this office to reply to all inquiries about the prisoners. It receives from the various services concerned full information respecting internments and transfers, releases on parole, exchanges, escapes, admissions into hospital, deaths, as well as other information necessary to enable it to make out and keep up to date an individual return for each prisoner of war. The office must state in this return the regimental number, name and surname, age, place of origin, rank, unit, wounds, date and place of capture, internment, wounding, and death, as well as any observations of a special character. The individual return shall be sent to the Government of the other belligerent after the conclusion of peace.

It is likewise the function of the inquiry office to receive and collect all objects of personal use, valuables, letters, &c., found on the field of battle or left by prisoners who have been released on parole, or exchanged, or who have escaped, or died in hospitals or ambulances, and to forward them to those concerned.—*Article 14, Regulations, Hague Convention IV, 1907.*

Article 14, Japanese and Cuban Amendments.

Article 14 relative to the information bureau for prisoners of war was the subject of two amendments filed by the delegations of Japan and Cuba, which were both adopted unanimously without discussion.

The first inserts after the second sentence of the first paragraph the following words:

"The individual return shall be sent to the Government of the other belligerent after the conclusion of peace: the bureau must state in it the regimental number, name and surname, age, place of origin, rank, unit, date and place of capture, internment, wounding and death, as well as any observations of a special character.

"The second relates to prisoners released on parole, exchanged or escaped, and is inserted in the final clauses of the first and second paragraphs, which are thus made to read as follows:

"It is kept informed of internments and transfers as well as releases on parole, exchanges, escapes, admissions into hospitals and deaths.

"It is likewise the function of the information bureau to receive and collect all objects of personal use, valuables, letters, etc., found on the field of battle or left by prisoners who have *been released on parole, or exchanged, or who have escaped or* died in hospitals or ambulances, and to forward them to those concerned."

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," p. 523.

A Bureau for information relative to prisoners of war is instituted, on the commencement of hostilities, in each of the belligerent States, and, when necessary, in the neutral countries on whose territory belligerents have been received. This Bureau is intended to answer all inquiries about prisoners of war, and is furnished by the various services concerned with all the necessary information to enable it to keep an individual return for each prisoner of war. It is kept informed of internments and changes, as well as of admissions into hospital and deaths.

It is also the duty of the Information Bureau to receive and collect all objects of personal use, valuables, letters, &c., found on the battlefields or left by prisoners who have died in hospital or ambulance, and to transmit them to those interested.

Article 14, Regulations, Hague Convention II, 1899.

There remain to be said a few words about the last seven Articles (14–20) of this chapter, which were added to it on the motion of his Excellency Mr. Beernaert, the senior delegate of Belgium.

Mr. Beernaert called attention to the fact that these proposals are by no means new, having been first suggested by Mr. Romberg-Nisard, who was actively engaged in relieving the sufferings of the victims of the war of 1870, and never ceased to agitate for better treatment of the wounded and prisoners in wars of the future.

These additional provisions provide, in the first place, for making general the organization of *information bureaus* concerning prisoners, similar to the one instituted in Prussia in 1866 which rendered such great service during the war of 1870–1. This is the object of the first of these articles (Article 14).

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 144.

Some of the provisions incorporated in Articles XIV, XV, and XVI had already been embodied in the regulations of various countries and were put into practice in some recent wars—notably by Prussia in the wars of 1866 and 1870–1; but they lacked the internationl authority which those Articles have now given them. In the Russo-Turkish War, for example, the Russian Government furnished lists of the Turkish prisoners at regular intervals to both the Turkish Government and the English minister at St. Petersburg; but Professor de Martens is careful to point out that his Government "was in no way bound to furnish information on this subject to the Porte during the course of the war." The rule as to collecting objects of personal use, found on the battlefield or left by deceased prisoners, is a notable advance on existing practice.

Spaight, p. 313; De Martens, p. 484.

Articles 14–20 (99) were additions to the Brussels Declaration and made provision for a Bureau for information relative to prisoners of war, and gave relief societies for prisoners facilities to carry out their objects. Certain defects in the working of these Bureaux which both Russia and Japan had established during the war were considered, and especially in the case of Article 14. The Japanese and Cuban delegates proposed the amendments which were adopted, and which require additional details to be kept regarding prisoners of war, including those who have been released on parole, or exchanged or who have escaped.

Higgins, p. 262.

[The Bureau of Information provided for by this article] must be furnished by all the services concerned with all the necessary information to enable it to make out and keep up to date a separate return for each prisoner, and it must, therefore, be kept informed of internments and changes as well as of admissions into hospital, of deaths, releases on parole, exchanges, and escapes. It must state in its return for each prisoner the regimental number, surname and name, age, place of origin, rank, unit, wounds, date and place of capture, of internment, of the wounds received, date of death, and any observations of a special character. This separate return must, after conclusion of peace, be sent to the Government of the other belligerent.

Oppenheim, vol. 2, p. 171.

Distinction between public and private property.

The case of moveable enemy property found by an invading belligerent on enemy territory is different from the case of moveable enemy property on the battlefield. According to a former rule of the Law of Nations all enemy property, public or private, which a belligerent could get hold of on the battlefield was booty and could be appropriated. Although some modern publicists who wrote before the Hague Peace Conference of 1899 teach the validity of this rule, it is obvious from articles 4 and 14 of the Hague Regulations that it is now obsolete as regards *private* enemy property except military papers, arms, horses, and the like. But as regards *public* enemy property this customary rule is still valid. Thus weapons, munitions, and valuable pieces of equipment which are found upon the dead, the wounded, and the prisoners, whether they are public or private property, may be seized, as may also the war-chest and State papers in possession of a captured commander, enemy horses, batteries, carts, and everything else that is of value.

Oppenheim, vol. 2, p. 177.

Private enemy property on the battlefield is no longer in every case an object of booty. Arms, horses, and military papers may indeed be appropriated, even if they are private property, as may also private means of transport, such as carts and other vehicles which an enemy has made use of. But letters, cash, jewellery, and other articles of value found upon the dead, wounded, and prisoners must, according to article 14 of the Hague Regulations and article 4 of the Geneva Convention, be handed over to the Bureau of Information regarding prisoners of war, which must transmit them to those

interested. Through article 14 of the Hague Regulations and article 4 of the Geneva Convention it becomes apparent that nowadays private enemy property, except military papers, arms, horses, and the like, is no longer booty, although individual soldiers often take as much spoil as they can get. It is impossible for the commanders to bring the offender to justice in every case.

Oppenheim, vol. 2, p. 181.

Having dealt with the various kinds of enemy property found within a belligerent state at the outbreak of war, we now pass on to consider the treatment to be accorded by an army to movables and immovables under its control, if they are tainted with the enemy character. In this connection, we will deal first with *Booty*, which may be described as movables taken from the foe on the battlefield, or in the course of such warlike operations on land as the capture of a camp or the storming of a fort. But the scope of this definition has been greatly diminished by the Hague Regulations concerning the Laws and Customs of War on Land. The fourteenth article declares that all valuables and objects of personal use found on battlefields are to come into the custody of the Information Bureau and be by it returned to those interested; and the fourth article lays down that the personal belongings of prisoners, save only their arms, horses, and military papers remain their property. That these limitations are not counsels of perfection, but practicable rules, was proved by Japan in her war of 1904–1905 with Russia, when she sent back through French diplomatic and consular channels over a million articles, including coins, found on the field, or left by deceased prisoners of war. This took place under the Hague code of 1899; but the code of 1907 now in force differs in no respect from its predecessor in the provisions that bear on the subject.

Lawrence, p. 429.

A bureau of information relative to prisoners of war must be formed at the commencement of hostilities in each of the belligerent States. The work of this bureau is to reply to all inquiries with regard to prisoners.

The departments concerned must therefore notify to the bureau all casualties amongst prisoners, and furnish it with such information as will enable it to make out and keep up to date a history sheet for each prisoner of war.

This history sheet must give the number, surname, and Christian name of the prisoner, his age, place of origin, rank, wounds, date and place of capture, internment, wounding and death, with such other remarks as may be necessary. The sheet must be sent to the Government of the other belligerent as soon as peace has been concluded.

Edmonds and Oppenheim, Arts. 102–104.

The prisoners of war information bureau is also charged with the duty of receiving and storing all personal effects, valuables, letters, etc., found on the field of battle, or left by prisoners who have been released on parole, or exchanged, or have died in hospitals or ambulances. It must forward these effects to the persons concerned through their Government.

Edmond Oppenheim, Art. 107.

There is a definite obligation that personal effects, valuables, letters, etc., found on the field must be collected and forwarded, by means of the prisoners of war information bureau, to those concerned.

Edmonds and Oppenheim, Art. 433.

Property found or captured on a battlefield is dealt with generally in accordance with the rules given above. Private enemy property on the battlefield is not, as in former times, in every case booty. Horses, arms and ammunition and military papers are booty even if they are the property of individuals, but cash, jewellery, and other private articles of value are not.

Edmonds and Oppenheim, Art. 433.

Article 14 of the Hague Regulations prescribes that on the outbreak of hostilities there shall be established in each of the belligerent States and in a given case in neutral States, which have received into their territory any of the combatants, an information bureau for prisoners of war. Its duty will be to answer all inquiries concerning such prisoners and to receive the necessary particulars from the services concerned in order to be able to keep a personal entry for every prisoner. The information bureau must always be kept well posted about everything which concerns a prisoner of war. Also this information bureau must collect and assign to the legitimate persons all personal objects, valuables, letters, and the like, which are found on the field of battle or have been left behind by dead prisoners of war in hospitals or field-hospitals.

German War Book, p. 96.

Article 14, Annex to Hague Convention IV, 1907, is substantially identical with section 164, Austro-Hungarian Manual, 1913.

After the outbreak of war between Russia and Japan, the Russian Government, through the French minister at Tokio, requested the Japanese Government to furnish regularly a list of the Russian prisoners of war who might fall into the hands of the Japanese army, and, in case of the death of such prisoners, to inform the French legation or consulates of the fact. The Japanese Government promised to furnish the desired information every ten days, so far as practicable, provided that the Russian Government would give to the United States embassy or consulates in Russia similar information concerning Japanese prisoners. This arrangement was mutually agreed upon.

Moore's Digest, vol. 7, p. 226, For. Rel. 1904, 716, 719.

RELIEF SOCIETIES FOR PRISONERS OF WAR, FACILITIES EXTENDED TO.

Relief societies for prisoners of war, which are properly constituted in accordance with the laws of their country and with the object of serving as the channel for charitable effort shall receive from the belligerents, for themselves and their duly accredited agents every facility for the efficient performance of their humane task within the bounds imposed by military necessities and administrative regulations. Agents of these societies may be admitted to the places of internment for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue.[1]—*Article 15, Regulations, Hague Convention IV, 1907.*

The second article (Article 15) provides that certain facilities shall be given to such *relief societies for prisoners of war* as are properly constituted.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 144.

That each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him.

Treaty of Peace and Amity between the United States and Prussia, concluded July 11, 1799, Article XXIV.

Each party shall be allowed to keep a commissary of prisoners, appointed by itself, with every cantonment of prisoners, in possession of the other; which commissary shall see the prisoners as often as he pleases; shall be allowed to receive, exempt from all duties or taxes, and to distribute, whatever comforts may be sent to them by their friends; and shall be free to transmit his reports in open letters to the party by whom he is employed.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

A new and valuable rule, taken from the Brussels Declaration, is that of article 15 of the Hague Regulations making it a duty of every belligerent to grant facilities to Relief Societies to serve as inter-

[1] This article is substantially identical with Article 15, Regulations, Hague Convention II, 1899.

mediaries for charity to prisoners of war. The condition of the admission of such societies and their agents is that the former are regularly constituted in accordance with the law of their country. Delegates of such societies may be admitted to the places of internment for the distribution of relief, as also to the halting-places of repatriated prisoners, through a personal permit of the military authorities, provided they give an engagement in writing that they will comply with all regulations by the authorities for order and police.

Oppenheim, vol. 2, pp. 171, 172.

Legally constituted charitable societies, formed for the purpose of assisting prisoners of war, must be given facilities for carrying out their task, provided military exigencies and administrative regulations permit. The representatives of the societies need not, however, be given access to the places of internment of prisoners, or the halting places of prisoners who are being repatriated, unless they are in possession of a personal permit furnished to them by the military authorities, and have given an undertaking in writing to comply with all regulations of order and police which may be issued.

Edmonds and Oppenheim, Art. 112.

Article 15, Annex to Hague Convention IV, 1907, is substantially identical with section 165, Austro-Hungarian Manual, 1913.

Aid given by representative of neutral power.

November 11, 1899, the British ambassador at Washington was advised that the state secretary of the Transvaal had notified the United States consul at Pretoria, who was exercising good offices in behalf of British subjects, that all requests for the payment of money to British prisoners and all inquiries concerning them must in future come through military channels at the front, and that he would not further recognize the United States consul "in any British official capacity."

The British Government desired it to be pointed out to the Transvaal Government that, in declining the good offices of the consul in behalf of British prisoners, they were "departing from the usual practice;" that during the Crimean war moneys for British prisoners in Russia and for Russian prisoners in England were distributed through the Danish representatives in St. Petersburg and London; that during the Franco-German war moneys were handed to the French prisoners in Germany through the British representative at Berlin, and letters sent from them to persons in France through the British foreign office. It was added that reciprocal privileges would be allowed to Boer prisoners in British hands.

The consul subsequently reached an understanding, which he set forth in a note to Mr. Reitz, the state secretary, as follows:

"1. The Government of the South African Republic objects to recognizing the United States (or any other) consular officer as the official representative of the British Government during the present war.

"2. The Government of the South African Republic objects to the transmission by the United States consul of—

"(*a*) Official communications from the British Government and addressed to the Government of the South African Republic.

"(*b*) Official communications from the British Government and addressed to British prisoners here.

"(*c*) Moneys or funds sent by the British Government to British prisoners here.

"On the other hand, I understand that the Government of the South African Republic will have no objection to the performance by the United States consul at this capital of the following services on behalf of the British prisoners of war and their freinds:

"1. The forwarding of letters and papers sent by friends or relatives of the prisoners.

"2. The distribution of funds (under the supervision of the war office of the South African Republic) sent to the British prisoners by their friends or relatives.

"Provided that these services are reciprocal and that the Government of the South African Republic will have the right to request the similar services of the United States consular officers in the British possessions and on behalf of the Boer and Afrikander prisoners of war that are now in the hands of the British authorities.

"I further understand that the Government of the South African Republic reserves to itself the right to revoke any or all of the privileges to receive letters, money, and parcels now enjoyed by the British prisoners of war in this Republic, and that the fact that Boer or Afrikander prisoners of war in the hands of the British authorities are not receiving kind and humane treatment, or are denied privileges similar to the privileges now allowed to British prisoners of war in the South African Republic, will, if proven to your satisfaction, be deemed sufficient cause and reason for such action on the part of your honorable Government."

Mr. Reitz replied that this stated with perfect correctness "the attitude in accordance with which this Government has acted and will continue to act."

It was subsequently stated that British prisoners were allowed to receive parcels of tobacco and other things, including newspapers, if sent by their friends, through the consulate.

The British Government, in expressing its thanks for the success which had attended the efforts of the consul in behalf of the British prisoners, stated, as regards the treatment of Boer prisoners by British authorities, "that telegrams, books, clothing, and luxuries are freely transmitted to them after inspection; that small amounts of money are given to them direct, while larger amounts are handed to the commandant to issue in small sums, and that clothing is issued at the public expense to prisoners who are in great need of it."

Moore's Digest, vol. 7, pp. 223–225, For. Rel. 1900, 619, 621–623.

EXEMPTIONS OF INQUIRY OFFICES AND PRISONERS OF WAR AS TO POSTAGE, ETC.

Inquiry offices enjoy the privilege of free postage. Letters, money orders, and valuables, as well as parcels by post, intended for prisoners of war, or dispatched by them, shall be exempt from all postal duties in the countries of origin and destination, as well as in the countries they pass through.

Presents and relief in kind for prisoners of war shall be admitted free of all import or other duties, as well as of payments for carriage by the State railways.[1]—*Article 16, Regulations, Hague Convention IV, 1907.*

The third article (Article 16) grants *free postage* and other advantages to the information bureaus and in general for shipments made to prisoners.

Report to Hague Conference 1899, from the Second Commission, "Reports to the Hague Conferences," p. 144.

The only one of these additional provisions due to the initiative of the senior delegate of Belgium that has given rise to discussion is the third (Article 16) relative to *postal, customs and other privileges.* But through the hearty support of Mr. Lammasch, the technical delegate of Austria-Hungary, and General den Beer Poortugael, the second delegate of the Netherlands, this article was also adopted unanimously.

It should be observed that postal and other conventions will have to be modified to conform to this provision. As to the customs franking privilege, it obviously applies only to articles *for the personal use of the prisoners.*

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 144.

Censorship of letters.

Although it is not expressly stated in Article XVI, it is to be understood that letters to or from prisoners of war are liable to censorship. This is an obvious military precaution and has always been the rule.

Spaight, p. 314.

Postal conventions, censorship, &c.

To give full effect to this article [16, Hague Regulations, 1907], new postal conventions would be necessary, as also, probably, fresh legislation.

[1] This article is substantially identical with Article 16, Regulations, Hague Convention II, 1899.

Letters written to, or received for, prisoners of war are liable to such censorship as may be ordered.

The provision in the second paragraph would apply only to articles for personal use.

Holland, p. 26.

Letters, money orders, valuables, and postal parcels destined for or despatched by prisoners of war must enjoy free postage, and gifts and relief in kind for prisoners of war must be admitted free from all custom and other duties as well as payments for carriage by Government railways (article 16).

Oppenheim, Vol. 2, p. 169.

Presents and relief in kind for them [prisoners of war] are to be admitted untaxed and to be carried by state railways free of charge. Their correspondence is to be exempt from postal charges, not only in the belligerent countries, but in all neutral states through which it may pass; * * *

Lawrence, p. 402.

Censorship. —The foregoing rule does not preclude censorship and regulations which the belligerent holding the prisoners may decide to establish with regard to receipt and dispatch of letters and other articles referred to.

U. S. Manual, p. 33.

The information bureaux must enjoy the privilege of free carriage. Letters, money orders, and valuables, as well as postal parcels, intended for prisoners of war, or despatched by them, must be exempt from all postal charges in the countries of origin and destination as well as in the countries through which they pass. Presents and relief in kind for prisoners of war must be admitted free of all import and other duties, and free of any payment for carriage by State railways.

Edmonds and Oppenheim, art. 108.

The information bureau enjoys freedom from postage, as do generally all postal despatches sent to or by prisoners of war. Charitable gifts for prisoners of war must be free of customs duty and also of freight charges on the public railways.

German War Book, p. 96.

Article 16, Annex to Hague Convention IV, 1907, is substantially identical with section 166, Austro-Hungarian Manual, 1913.

OFFICER-PRISONERS, HOW PAID.

Officers taken prisoners shall receive the same rate of pay as officers of corresponding rank in the country where they are detained, the amount to be ultimately refunded by their own Government.—*Article 17, Regulations, Hague Convention IV, 1907.*

Article 17, Japanese Amendment.

The amendment proposed by the Japanese delegation was intended to replace Article 17 with the following text:

The Government will grant, if necessary, to officers who are prisoners in its hands, a suitable pay, the amount to be refunded by their Government.

This change was due to a desire to avoid the different interpretations which could be given to the text in force, and to the necessity of making more precise the definition of the term 'full pay' in that text. The new wording, however, could permit a Government either to give nothing or to grant excessive pay; and it was therefore sent to the committee. The committee, after acquainting themselves with the interpretations that the domestic regulations of different countries give to the phrase 'full pay' found it indispensable to omit the words 'if necessary' in order to make the article obligatory.

It was also deemed necessary, for the sake of consistency, to take into account the corresponding article of the Geneva Convention of 1906, dealing with the salaries of the medical personnel when prisoners (Chapter 3, Article 13) which secures to them the same pay and allowances from the captor as the latter gives to persons of the same grade in his own army.

In consequence, the committee proposed to the subcommission the following formula:

The Government will grant to officers who are prisoners in its hands the pay to which officers of the same rank of its army are entitled, the amount to be refunded by their Government.

As the Japanese delegation concurred in this text, the Commission adopted it unanimously and submits it to the Conference.

Report to Hague Conference, 1907, from the Second Commission, "Reports to Hague Conferences," p. 523.

Officers taken prisoners may receive, if necessary, the full pay allowed them in this position by their country's regulations, the amount to be repaid by their Government.

Article 17, Regulations, Hague Convention II, 1899.

The fourth article (Article 17) has for its object to favor *payment of salary* to prisoners who are officers.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 144.

Unless, of course, the liability is undertaken, in the Treaty of Peace, by the other belligerent.

Holland, p. 26.

Article XVII is an amendment made by the last Hague Conference of a provision of the Conference of 1899, which gave officers who were prisoners of war the privilege of receiving advances of pay from their captor, if they were entitled to pay during captivity under their army regulations: the amount of the advances to be repaid by their Government. The amended Article entitles them to be paid, even if their service regulations deprive them of pay while in captivity, and the rate authorised is that of the capturing belligerent's army, not their own. As provided in the old article, the captor is to be reimbursed, but, as Professor Holland points out, there is nothing to prevent the latter undertaking in the Peace Treaty to bear the cost of the payments he has made. The issue of pay to captured officers has been the rule in modern wars.

Spaight, p. 315.

The difference in treatment of officers and men as regards the issue of pay is reasonably to be explained by their different standards of living and the disproportion between their consequent necessary expenditure. Although in a campaign officers are ready and willing to share their men's fare, there is no reason that they should do so under the altered conditions of internment. The men, moreover, may be employed and paid for their work, while officers may not.

Spaight, p. 316.

The alteration in this Article [17, Hague Regulations, 1907] was also the result of a Japanese proposal slightly modified in Committee. Article 17 (99) provided that officers who were prisoners might receive, in proper cases, the full pay allowed them while in this position by the regulations of their own country, the amount to be repaid by their Government. There appear to have been doubts as to the actual meaning of this Article and some Governments, e. g. the United States, make no provision for such a case. The original Japanese draft left the matter in a very equivocal condition and the Sub-Committee, having referred to the corresponding Article in the Geneva Convention of 1906 as regards the pay of the *personnel* of the Medical Service in the enemy's hands (Chapter iii, Art. 13), proposed the Article in the form in which it now stands, so that officers taken prisoner receive the pay allowed to officers of the same rank of the country whose prisoners they are, the amount to be repaid by their Government.

Higgins, p. 262.

Officer prisoners must receive the same pay as officers of corresponding rank in the country where they are detained, the amount to be repaid by their Government after the conclusion of peace.

Oppenheim, vol. 2, p. 168.

Though officers cannot be set to task-work by their captors, they are not left without pecuniary resources. They must receive the same pay as officers of corresponding rank in the country where they are detained, and the amount so expended must be refunded by their own government at the end of the war.

Lawrence, p. 402.

Article 17, Annex to Hague Convention IV, 1907, is substantially identical with section 167, Austro-Hungarian Manual, 1913.

RELIGIOUS LIBERTY OF PRISONERS OF WAR.

Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever Church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.[1]—*Article 18, Regulations, Hague Convention IV, 1907.*

This article cannot, of course, be fully put into execution unless a chaplain of the prisoner's own persuasion happens to be present.

Holland, p. 26.

Article XVIII guarantees freedom of conscience and of worship to prisoners of war. There may be cases, of course, in which it is impossible to provide for the proper celebration of the prisoners' worship—for instance (as Professor Holland points out), if there is no chaplain of their denomination present. The Japanese raised no objection to the practice of even the most bizarre religious cults among the Russian prisoners in 1904–5.

Spaight, p. 316.

All prisoners of war must enjoy every latitude in the exercise of their religion, including attendance at their own church service, provided only they comply with the regulations for order issued by the military authorities.

Oppenheim, vol. 2, p. 168.

Prisoners of war are to have full liberty of worship.

Lawrence, p. 402.

Prisoners of war should be * * * allowed entire freedom of worship.

Art. 28, Russian Instructions, 1904.

Prisoners of war must be given complete liberty in the exercise of their religion, including attenadnce at the services of their own Church, on the sole condition that they comply with the regulations of order and police prescribed by the military authorities.

Edmonds and Oppenheim, Art. 113.

Article 18, Annex to Hague Convention IV, 1907, is substantially identical with section 168, Austro-Hungarian Manual, 1913.

[1] This article is substantially identical with Article 18, Regulations, Hague Convention II, 1899.

WILLS, DEATH CERTIFICATES, AND BURIAL OF PRISONERS OF WAR.

The wills of prisoners of war are received or drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates as well as for the burial of prisoners of war, due regard being paid to their grade and rank.[1]—*Article 19, Regulations, Hague Convention IV, 1907.*

Legal provisions as to "military" wills.

Any difficulty which might have arisen out of the provisions of Article XIX as to prisoners' wills is overcome by the exceptional privileges which both English law and those European systems of jurisprudence which derive from the Roman code grant to soldiers as regards the making of a "last will and testament." A nuncupative or verbal will, or a private letter expressing the writer's wishes as to the disposal of his effects, is commonly regarded as having the full legal effect of a will. The soldier who is captured is still considered as being "on actual military service," and though he has not acquired a domicile in the captor's country, a will drawn up in accordance with the regulations of the captor's army would probably be accepted in every case as a sound "military will"—certainly by the Probate Court of England.

Spaight, p. 317.

Care of the dead.

Respect should always be shown to the enemy's dead, whether they have died on the field of battle or in captivity. Care should also be taken before burial, to preserve their regimental number, or other evidences of identity, with a view to communicating the same to the enemy's commander, or to the Bureau mentioned in Art. 34, *supra* (H. R. 14). Cf. Art. 45, *infra* (G. 4).

Holland, p. 26.

If a prisoner wants to make a will, it must be received by the authorities or drawn up on the same conditions as for soldiers of the national army. And the same rules are valid regarding death certificates and the burial of prisoners of war, and due regard must be paid to their grade and rank.

Oppenheim, vol. 2, p. 169.

The wills of prisoners are to be drawn up and preserved, in conformity with the common law.

In case of the death of a prisoner of war, a record of it shall be made and, at the time of the obsequies, proper regard shall be paid to his rank and titles.

Arts. 35 and 36, Russian Instructions, 1904.

[1] This article is substantially identical with Article 19, Regulations, Hague Convention II, 1899.

The wills of prisoners of war must be received or drawn up, their certificates of death prepared, and their burials carried out, due regard being paid to their rank, in the same way as for soldiers of the army which captured them.

Edmonds and Oppenheim, Art. 114.

Article 19, Annex to Hague Convention IV, 1907, is substantially identical with section 169, Austro-Hungarian Manual, 1913.

REPATRIATION OF PRISONERS OF WAR AFTER WAR ENDS.

After the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.[1]—*Article 20, Regulations, Hague Convention IV, 1907.*

Finally, the last of these new articles (Article 20) expressly stipulates that after the conclusion of peace 'the *repatriation* of prisoners of war shall be carried out as quickly as possible.' Immediate absolute liberation is indeed not possible, for it would be sure to lead to disorder.

This Article 20 was to have a second paragraph saying that no prisoner of war can be detained nor his liberation postponed on account of sentences passed upon him or of acts occurring since his capture, crimes or offenses at common law excepted. At the suggestion of Colonel Gross von Schwarzhoff this provision was omitted by common accord in consideration of the requirements of discipline which must be maintained and enforced with sufficient penalties up to the very last day of the captivity of prisoners of war.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 144.

The captivity of prisoners of war ceases, as a matter of right, at the conclusion of peace; but their liberation is then regulated by agreement between the belligerents.

It also ceases as of right for wounded or sick prisoners, who, after being cured, are found to be unfit for further military service. The captor should then send them back to their country.

Institute, 1880, pp. 39, 40.

Reasons for delay.

Some delays must, of course, occur, on account of (1) insufficiency of transport; (2) obvious risk in at once restoring to the vanquished Power the troops of which it has been deprived; (3) some prisoners being under punishment for offences committed during their imprisonment.

Holland, p. 27.

Reasons for delay.

The repatriation of the Spanish prisoners in 1898 was carried out by the United States Government with exceptional despatch. The terms of Toral's surrender provided for the return of all the troops in Cuba to Spain, without delay, and the shipment began on 9th August, the work of transportation being entrusted to a Spanish shipping line, the Compania Transatlantica Espanola, which was employed for two reasons: it made the lowest tender for the service, and the Washington War Department wished to avoid any charge of ill-treatment of the prisoners being laid at any American door, as

[1] This article is substantially identical with Article 20, Regulations, Hague Convention II, 1899.

might have happened had an American company been employed. All the troops—about 23,000—were embarked by 17th September. The arrangement was both humane and business-like.

The second exception referred to by Professor Holland is an extremely dubious one. There is no authority for it in the *Reglement* itself, nor in the unwritten usages of war as reflected in the pages of the jurists. To allow a belligerent to retain prisoners of war because they might be used to renew the struggle would be to sanction a possibly indefinite retention of the troops of an amicable sovereign Power (peace having been made) and to make the provisions of Article XX a dead letter. If the capturing belligerent has to go to such an extreme length as this to safeguard himself, he would do better not to sign the Peace Treaty at all. The circumstances in which the measure contemplated by Professor Holland would be justified appear very unlikely to arise in a war between modern civilised Powers.

Professor Holland's third exception is also mentioned by the German General Staff jurist, and has the authority of the Hague delegates of 1899, as expressed in the Protocol of the Conference. An addition to Article XX was proposed, stating that a prisoner of war could not be detained, nor could his liberation be deferred, on account of any sentence pronounced or any event which occurred since his capture, except for crimes or delicts under common law. The addition was suppressed unanimously, on the ground that discipline must be maintained and surrounded with adequate sanctions up to the very last day of captivity. A further case in which repatriation may be deferred is where a prisoner is awaiting trial for an offence against the laws of war.

Spaight, p. 318; *Kreigsbrauch im Landkriege*, p. 17.

Captivity can come to an end through different modes. Apart from release on parole, which has already been mentioned, captivity comes to an end—(1) through simple release without parole; (2) through successful flight; (3) through liberation by the invading enemy to whose army the respective prisoners belong; (4) through exchange for prisoners taken by the enemy; (5) through prisoners being brought into neutral territory by captors who take refuge there: and, lastly (6), through the war coming to an end. Release of prisoners for ransom is no longer practised, except in the case of the crew of a captured merchantman released on a ransom bill. It ought, however, to be observed that the practice of ransoming prisoners might be revived if convenient, provided the ransom is to be paid not to the individual captor but to the belligerent whose forces made the capture.

As regards the end of captivity through the war coming to an end, a distinction must be made according to the different modes of ending war. If the war ends by peace being concluded, captivity comes to an end at once with the conclusion of peace, and, as article 20 of the Hague Regulations expressly enacts, the repatriation of prisoners must be effected as speedily as possible. If, however, the war ends through conquest and annexation of the vanquished State, captivity comes to an end as soon as peace is established. It ought to end with annexation, and it will in most cases do so. But as guerilla war may well go on after conquest and annexation, and thus prevent a

condition of peace from being established, although real warfare is over, it is necessary not to confound annexation with peace. The point is of interest regarding such prisoners only as are subjects of neutral States. For other prisoners become through annexation subjects of the State that keeps them in captivity, and such State is, therefore, as far as International Law is concerned, unrestricted in taking any measure it likes with regard to them. It can repatriate them, and it will in most cases do so. But if it thinks that they might endanger its hold over the conquered territory, it might likewise prevent their repatriation for any definite or indefinite period.

Oppenheim, vol. 2, pp. 172, 173.

Exception.

After the South African War, Great Britain refused to repatriate those prisoners of war who were not prepared to take the oath of allegiance.

Oppenheim, vol. 2, p. 173, note.

A very important effect of a treaty of peace is termination of the captivity of prisoners of war. This, however, does not mean that with the conclusion of peace all prisoners of war must at once be released. It only means—to use the words of article 20 of the Hague Regulations—that "After the conclusion of peace, the repatriation of prisoners of war shall take place as speedily as possible." The instant release of prisoners at the very place where they were detained, would be inconvenient not only for the State which kept them in captivity, but also for themselves, as in most cases they would not possess means to pay for their journey home. Therefore, although with the conclusion of peace they cease to be captives in the technical sense of the term, prisoners of war remain as a body under military discipline until they are brought to the frontier and handed over to their Government. That prisoners of war may be detained after the conclusion of peace until they have paid debts incurred during captivity seems to be an almost generally recognised rule. But it is controversial whether such prisoners of war may be detained as are undergoing a term of imprisonment imposed upon them for offences against discipline. After the Franco-German War in 1871 Germany detained such prisoners, whereas Japan after the Russo-Japanese War in 1905 released them.

Oppenheim, vol. 2, p. 335.

According to modern rules the right to detain prisoners ceases when the war ceases. Each side must then make arrangements for their repatriation. But up to the Peace of Westphalia in 1648 it was necessary to make special stipulations for such release without ransom; and in default of any arrangement of the kind the prisoners were detained in captivity.

Lawrence, pp. 398, 399.

Exceptions.

It is generally admitted that prisoners of war may be detained after the conclusion of peace until they have paid the debts incurred by them during their captivity, and while they are serving out sentences of imprisonment pronounced against them for common law crimes. Whether they may be detained during terms of imprison-

ment imposed on them for disciplinary offences is a moot point. In principle such imprisonment is merely a modification of the captivity, therefore an incident of the war, and cannot continue after the peace has put an end to the exercise of warlike force and therefore to the captivity itself. The case is different from that of the condemnation by a court of admiralty, after the peace, of an enemy ship the title to which was complete by capture during the war, since there is then no new or continuing exercise of warlike force, merely the existing title is declared. On the other hand it is argued that disciplinary punishments imposed when the war was plainly nearing its end would not be deterrent if the peace terminated them, and it would be difficult at that stage of the war to keep the prisoners in order. In 1871 the Prussian government acted on this practical view, and France remonstrated but did not retaliate. Calvo (§2957) defends the French view, but Lueder is inclined to justify Prussia without controverting the principle. At the Hague in 1899 the draft of H XX proposed by the Belgian delegate M. Beernaert contained a clause prohibiting the detention of a prisoner for condemnations pronounced or facts occurred since his capture, except common law crimes or offences; but the clause was struck out on the German technical delegate's objecting to it. Japan in 1905, after her war with Russia, released the prisoners who were serving disciplinary imprisonments; and this appears to be the proper course to follow.

Westlake, vol. 2, pp. 71, 72.

When repatriation delayed.—The immediate repatriation of prisoners of war is not always possible, due to the following causes:

1. Insufficiency of transport;
2. Obvious risk to captor State in restoring to the vanquished power troops of which it has been deprived; and
3. Some prisoners of war may be undergoing punishment for offenses committed during their imprisonment.

U. S. Manual, p. 35.

Through the conclusion of peace captivity comes *ipso facto* to an end, but the prisoners of war remain nevertheless as a body under the military discipline of the Government that holds them, until their repatriation. The repatriation must, however, be carried out as quickly as possible; but absolute immediate repatriation is not always feasible, owing to the risk of creating disorder and to insufficiency of transport.

It is a matter of controversy whether prisoners of war may be detained who are awaiting trial or are undergoing a term of imprisonment imposed on them for disciplinary offences. It is advisable, therefore, to come to some arrangement with regard to all such prisoners in the terms of peace. That prisoners of war may be retained after the conclusion of peace until they have paid debts incurred during captivity seems to be an almost generally recognized rule.

Edmonds and Oppenheim, Arts. 115, 116.

Prisoners undergoing punishment.

All war crimes are liable to be punished by death, but a more lenient penalty may be pronounced. Corporal punishment is excluded and cruelty in any form must be avoided. The punishment should be deterrent, but great severity may defeat its own ends by driving the population to rebellion.

In pronouncing a sentence of imprisonment it need not be taken into consideration whether there is a probability of the prisoner being released at the end of the war. There is no right to claim release and it would not be in the interest of humanity to grant such right, for otherwise belligerents would be forced to carry out capital punishment in many more cases than is now usually necessary.

Edmonds and Oppenheim, Arts. 450, 451.

With the cessation of the war every reason for the captivity ceases' provided there exist no special grounds for another view. It is on that account that care should be taken to discharge prisoners immediately. There remain only prisoners sentenced to punishment or awaiting trial, *i. e.*, until the expiration of their sentence or the end of their trial as the case may be.

German War Book, p. 99.

Article 20, Annex to Hague Convention IV, 1907, is substantially identical with section 170, Austro-Hungarian Manual, 1913.

The United States having agreed under the capitulation of Santiago de Cuba to return the Spanish troops to Spain, an understanding was sought through the British ambassador at Madrid with the Spanish Government that the transports would be considered as neutralized, both on the inward and on the outward voyage, no belligerent act to be committed by or upon them; and that they would not be subjected to port charges, unless pilotage, as to which an express understanding was desired.

Immediately afterwards an offer for the transportation of the Spanish prisoners was received from the Spanish Trans-Atlantic Line. The United States agreed to give to the ships of that line having only such armament as merchant ships usually carry, safe conduct on the inward and the outward voyage, provided that they committed no unneutral act. But, whatever the nationality of the ships, the United States proposed that Spain should provide medical and surgical attendance for prisoners on the transports; that the United States should furnish medical supplies and rations; but that Spain should designate one officer for each ship as commissary to see that the rations were sufficient, and that Spanish officers should assume the police regulation of the ships.

The Spanish Government agreed to these terms, including the exemption of the transports from port dues, except pilotage. It was also agreed that if American or neutral ships were employed, a quarantine station, in case of contagion, should be established on shore, so that the ships could depart promptly. A formal understanding with the Spanish Government was subsequently rendered unnecessary by the contract entered into with the Spanish Trans-Atlantic Company, under which the company agreed to take the officers and men from Santiago de Cuba to Spain for a certain sum for each individual, covering transportation, subsistence, and delivery on shore. The United States, on the other hand, gave to the ships while sailing under the contract to Santiago de Cuba and thence to Spain safe conduct against the acts of persons under the jurisdiction of the United States.

Moore's Digest, vol. 7, pp. 230, 231; For. Rel. 1898, 990, 992.

SICK AND WOUNDED, OBLIGATIONS TO, OF BELLIGERENTS.

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention.—*Article 21, Regulations, Hague Convention IV, 1907.*

Chapter III, The Sick and Wounded (Article 21).

The sole article in this chapter is a literal copy of Article 35 of the Brussels project. It was adopted unanimously and without debate. As the chairman of the subcommission remarked, we confine ourselves to stating that the rules of the Geneva Convention must be observed *between belligerents*. Moreover, the last part of the article anticipates a future modification of that Convention.

As you know, it is stated elsewhere, in Article 60 (old Article 56) that the Geneva Convention likewise applies to the sick and wounded interned in neutral territory.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 145.

[For the provisions of the Geneva Convention of 1906, see The Laws of Neutrality, discussion under the heading of Article 15, Hague Convention V, 1907.]

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22nd August, 1864, subject to any modifications which may be introduced into it.[1]

Article 21, Regulations, Hague Convention II, 1899.

In the case of enemies rendered harmless by wounds or disease, the growth of humane feeling has long passed beyond the simple requirement that they shall not be killed or ill-used, and has cast upon belligerents the duty of tending them so far as is consistent with the primary duty to their own wounded.

Hall, p. 416.

When ancient and modern warfare are compared, it is not in the treatment of prisoners only that the latter shows to great advantage. In these days

Provision is made for tending the sick and wounded, whereas we hear little of wounded in the battles of antiquity, when the usual lot of enemies left helpless on the field was to be first plundered and then killed. No special organization appears to have been provided for their relief till 1190, when, at the great siege of Acre during the Third Crusade, the order of Teutonic Knights was founded to tend them. Then for ages the task of caring for the sick and wounded was left to private and generally ecclesiastical benevolence. But in the seventeenth century states began to send into the field along with their armies a small number of surgeons and chaplains, and a few field-hospitals; and since then much progress has been made in this de-

[1] This article is identical with Article 35, Declaration of Brussels.

partment of army organization. In modern wars state provision has been supplemented by private effort; and in some cases neutral societies and individuals have given aid from motives of humanity. At last in 1864 humanitarian arrangements of an international character were made. In that year the Swiss Government, moved thereto by the terrible account of M. Dunant, who had seen the sufferings of the sick and wounded in the campaign of Solferino, called together a Conference of twelve states at Geneva. The result was a Convention which gradually obtained the adhesion of practically all the powers of the civilized world. It protected the sick and wounded from violence, and provided that all persons and things connected with the care of them should enjoy exemption, as far as possible, from the severities of warfare. It represented an enormous advance, though its provisions were by no means complete. An attempt to remedy some of its deficiencies and extend it to naval war was made in 1868; but the articles drawn up in that year were never ratified. The Hague Conference of 1899 produced a Convention for the Adaptation of the Principles of the Geneva Convention to Maritime Warfare. It also proclaimed in its Regulations for the conduct of war on land that "the obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of the 22d of August, 1864, subject to any modifications which may be introduced into it." The expected modifications were made in 1906, when the representatives of thirty-seven powers met at Geneva, and produced a new, more effective, and more elaborate Geneva Convention. The Hague Conference of the following year repeated the declaration of its predecessor as to the obligations of belligerents towards the sick and wounded in land warfare, with the difference that it spoke of "the Geneva Convention" instead of dating and defining it, and alluding to possible modifications. The Geneva Convention referred to is that of 1906, and therefore all powers accept it who accept the military code drawn up by the Second Peace Conference.

Lawrence, pp. 404, 405.

The treatment of the sick and wounded of armies, the privileges of the personnel charged with their care, the special immunities of the establishments and buildings in which they are attended, and the obligations with regard to the dead are dealt with in the "Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field" of the 6th July, 1906, generally called the "Geneva Convention."

Edmonds and Oppenheim, Art. 174.

Article 21, Annex to Hague Convention IV, 1907, is substantially identical with section 171, Austro-Hungarian Manual, 1913.

PROHIBITED MEANS OF INJURING THE ENEMY.

The right of belligerents to adopt means of injuring the enemy is not unlimited.[1]

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

(*a.*) To employ poison or poisoned weapons;

(*b.*) To kill or wound treacherously individuals belonging to the hostile nation or army.

(*c.*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion;

(*d.*) To declare that no quarter will be given;

(*e.*) To employ arms, projectiles, or material calculated to cause unnecessary suffering;

(*f.*) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

(*g.*) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;

(*h.*) To declare abolished, suspended, or inadmissible in a Court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.[2]—*Articles 22 and 23, Regulations, Hague Convention IV, 1907.*

Article 23.—German Amendment.

The German delegation has proposed to add to Article 23, as now in force, a new paragraph thus worded:

(It is especially forbidden) to declare abolished, suspended, or inadmissible the private claims of the *ressortissants* of the hostile party.

This addition was considered as defining in very felicitous terms one of the consequences of the principles admitted in 1899. It was approved unanimously, with a slight change in the text by inserting the words "in a court of law" after the word "inadmissible."

Report to Hague Conference, 1907, from the Second Commission, "Reports to Hague Conferences," p. 526.

[1] This article is identical with Article 22, Regulations, Hague Convention II, 1899.

[2] This article, except for the addition of paragraph *h* and the last paragraph, is substantially identical with Article 23, Regulations, Hague Convention II, 1899.

Section II, Hostilities.—Chapter 1, Means of Injuring the Enemy, Sieges, and Bombardments.

This chapter combines under one heading two distinct chapters of the Declaration of Brussels, of which the first was entitled 'Means of Injuring the Enemy' (Articles 12 to 14), and the second 'Sieges and Bombardments' (Articles 15 to 18).

The union of these chapters in a single one, as proposed by the drafting committee and approved on second reading by the subcommission, had for its object to make it clearly appear that the articles respecting means of doing injury are also applicable to sieges and bombardments.

The new Articles 22, 23 and 24 correspond exactly, aside from some changes of wording, to Articles 12, 13, and 14 of the Declaration of Brussels.

Article 23 begins with the words: 'In addition to the prohibitions provided by special conventions, it is especially forbidden * * *' These special conventions are first the Declaration of St. Petersburg of 1868, which continues in force, and then all those of like nature that may be concluded, especially subsequently to the Hague Conference. It seemed to the subcommission that the general formula was preferable to the old reading which mentioned only the Declaration of St. Petersburg.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 145.

The laws of war do not recognize in belligerents an unlimited power in the adoption of means of injuring the enemy.

Art. 12, Declaration of Brussels.

According to this principle are especially forbidden:

a. Employment of poison or poisoned weapons;

b. Murder by treachery of individuals belonging to the hostile nation or army;

c. Murder of an enemy who, having laid down his arms or having no longer means of defense, has surrendered at discretion;

d. The declaration that no quarter will be given;

e. The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868;

f. Making improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;

g. Any destruction or seizure of the enemy's property that is not imperatively demanded by the necessity of war.

Art. 13, Declaration of Brussels.

It is forbidden:

a. To make use of poison, in any form whatever;

b. To make treacherous attempts upon the life of an enemy; as, for example, by keeping assassins in pay or by feigning to surrender;

c. To attack an enemy while concealing the distinctive signs of an armed force;

d. To make improper use of the national flag, military insignia or uniform of the enemy, of the flag of truce and of the protective signs prescribed by the *Geneva Convention* (articles 17 and 40 below).

Institute, 1880, p. 29.

It is forbidden:

(*a*) To employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds,—notably projectiles of less weight than four hundred grams which are explosive or are charged with fulminating or inflammable substances. (*Declaration of St. Petersburg.*)

(*b*) To injure or kill an enemy who has surrendered at discretion or is disabled, and to declare in advance that quarter will not be given, even by those who do not ask it for themselves.

Institute, 1880, pp. 29, 30.

The implements of war, which may be lawfully used against an enemy, are not confined to those which are openly employed to take human life, as swords, lances, firearms and cannon; but also include secret and concealed means of destruction, as pits, mines, etc. So, also, of new inventions and military machinery of various kinds; we are not only justifiable in employing them against the enemy, but also, if possible, of concealing from him their use.

Halleck, p. 398.

But while the laws of war allow the use of new invention of arms, or other means of destruction, against the life and property of an enemy, there is a limit to this rule beyond which we cannot go. It is necessity alone that justifies us in making war and in taking human life, and there is no necessity for taking the life of an enemy who is disabled, or for inflicting upon him injuries which in no way contribute to the decision of the contest.

Halleck, p. 399.

In general it may be stated, that the rights of war, in respect to the enemy, are to be measured by the object of the war. Until that object is attained, the belligerent has, strictly speaking, a right to use every means necessary to accomplish the end for which he has taken up arms. We have already seen that the practice of the ancient world, and even the opinion of some modern writers on public law, made no distinction as to the means to be employed for this purpose. Even such institutional writers as Bynkershoek and Wolf, who lived in the most learned and not least civilized countries of Europe, at the commencement of the eighteenth century, assert the broad principle, that every thing done against an enemy is lawful; that he may be destroyed, though unarmed and defenceless; that fraud, and even poison, may be employed against him; and that an unlimited right is acquired by the victor to his person and property. Such, however, was not the sentiment and practice of enlightened Europe at the period when they wrote; since Grotius had long before inculcated milder and more humane principles; which Vattel subsequently enforced and illustrated, and which are adopted by the unanimous concurrence of all the public jurists of the present age.

The law of nature has not precisely determined how far an individual is allowed to make use of force, either to defend himself against an attempted injury, or to obtain reparation when refused by the aggressor, or to bring an offender to punishment. We can only collect from this law the general rule, that such use of force as is necessary for obtaining these ends is not forbidden. The same

principle applies to the conduct of sovereign States, existing in a state of natural independence with respect to each other. No use of force is lawful, except so far as it is necessary. A belligerent has, therefore, no right to take away the lives of those subjects of the enemy whom he can subdue by any other means. Those who are actually in arms, and continue to resist, may be lawfully killed; but the inhabitants of the enemy's country who are not in arms, or who, being in arms, submit and surrender themselves, may not be slain, because their destruction is not necessary for obtaining the just ends of war. Those ends may be accomplished by making prisoners of those who are taken in arms, or compelling them to give security that they will not bear arms against the victor for a limited period, or during the continuance of the war. The killing of prisoners can only be justifiable in those extreme cases where resistance on their part, or on the part of others who come to their rescue, renders it impossible to keep them. Both reason and general opinion concur in showing, that nothing but the strongest necessity will justify such an act.

Dana's Wheaton, pp. 426–428.

All the members of the enemy State may lawfully be treated as enemies in a public war; but it does not therefore follow, that all these enemies may be lawfully treated alike; though we may lawfully destroy some of them, it does not therefore follow, that we may lawfully destroy all. For the general rule, derived from the natural law, is still the same, that no use of force against an enemy is lawful, unless it is necessary to accomplish the purposes of war. The custom of civilized nations, founded upon this principle, has therefore exempted the persons of the sovereign and his family, the members of the civil government, women and children, cultivators of the earth, artisans, laborers, merchants, men of science and letters, and, generally, all other public or private individuals engaged in the ordinary civil pursuits of life, from the direct effect of military operations, unless actually taken in arms, or guilty of some misconduct in violation of the usages of war, by which they forfeit their immunity.

Dana's Wheaton, pp. 430, 431.

It is in regard to non-combatants and their property that the mildness of modern warfare appears in most striking contrast with the severity of ancient.

Woolsey, p. 216.

Bribery and seduction forbidden.

To lead the officers, counsellors, or troops of an enemy to treachery by bribes, or to seduce his subjects to betray their country, are temptations to commit a plain crime, which no hostile relation will justify. Yet to accept of the services of a traitor is allowable.

Woolsey, p. 214.

"On mere general principles it is lawful to destroy your enemy; and mere general principles make no great difference as to the manner by which this is to be effected; but the conventional law of mankind, which is evidenced in their practice, does make a distinction, and allows some, and prohibits other, modes of destruction." Sir W. Scott, in the *Flad Oyen*, 1 Rob. 134.

Holland, p. 40.

Punishment of violators of laws of war.

A belligerent, besides having the rights over his enemy which flow directly from the right to attack, possesses also the right of punishing persons who have violated the laws of war, if they afterwards fall into his hands, of punishing innocent persons by way of reprisal for violations of law committed by others, and of seizing and keeping non-combatants as hostages for the purpose of enabling himself to give effect without embarrassment to his rights of war.

To the exercise of the first of the above-mentioned rights no objection can be felt so long as the belligerent confines himself to punishing breaches of universally acknowledged laws. Persons convicted of poisoning wells, of assassination, of marauding, of the use of a flag of truce to obtain information, or of employing weapons forbidden on the ground of the needless suffering caused by them, may be abandoned without hesitation to the fate which they deserve.

Hall, pp. 430, 431.

In a general sense, a belligerent has the right to use all kinds of violence against the person and property of his enemy which may be necessary to bring the latter to terms. *Prima facie* therefore all forms of violence are permissible. But the qualification that the violence used shall be necessary violence has received a specific meaning; so that acts not only cease to be permitted so soon as it is shown that they are wanton, but when they are grossly disproportioned to the object to be attained; and the sense that certain classes of acts are of this character has led to the establishment of certain prohibitory usages.

These prohibitory usages limit the right of violence in respect of

1. The means of destruction which may be employed.
2. The conditions under which a country may be devastated.
3. The use of deceit.

Some questions not falling under either of these heads have to be determined by reference to the general limitation forbidding wanton or disproportionate violence.

Hall, pp. 551, 552.

The laws of war evolved in this way: isolated milder practices became by-and-by usages, so-called *usus in bello*, manner of warfare, Kriegs-Manier, and these usages through custom and treaties turned into legal rules. And this evolution is constantly going on, for, besides the recognised Laws of War, there are usages in existence which have a tendency to become gradually legal rules of warfare. The whole growth of the laws and usages of war is determined by three principles. There is, first, the principle that a belligerent should be justified in applying any amount and any kind of force which is necessary for the realisation of the purpose of war—namely, the overpowering of the opponent. There is, secondly, the principle of humanity at work, which says that all such kinds and degrees of violence as are not necessary for the overpowering of the opponent should not be permitted to a belligerent. And, thirdly and lastly, there is at work the principle of chivalry which arose in the Middle Ages and introduced a certain amount of fairness in offence and defence, and a certain mutual respect. And, in contradistinction to the savage cruelty of former times, belligerents have in modern times

come to the conviction that the realisation of the purpose of war is in no way hampered by indulgence shown to the wounded, the prisoners, and the private individuals who do not take part in the fighting. Thus the influence of the principle of humanity has been and is still enormous upon the practice of warfare. And the methods of warfare, although by the nature of war to a certain degree cruel and unsparing, become less cruel and more humane every day. But it must be emphasised that the whole evolution of the laws and usages of war could not have taken place but for the institution of standing armies, which dates from the fifteenth century. The humanising of the practices of war would have been impossible without the discipline of standing armies; and the important distinction between members of armed forces and private individuals could not have arisen without the existence of standing armies.

Oppenheim, vol. 2, p. 78.

Article 22 of the Hague Rules stipulates distinctly that the right of belligerents to adopt means of injuring the enemy is not unlimited, and this rule does not lose its binding force in a case of necessity. What may be ignored in case of military necessity are not the laws of war, but only the usages of war.

Oppenheim, vol. 2, p. 85.

But—to use the words of article 22 of the Hague Regulations—"the belligerents have not an unlimited right as to the means they adopt for injuring the enemy." For not all possible practices of injuring the enemy in offence and defence are lawful, certain practices being prohibited under all circumstances and conditions, and other practices being allowed only under certain circumstances and conditions, or only with certain restrictions. The principles of chivalry and of humanity have been at work for many hundreds of years to create these restrictions, and their work is not yet at an end. However, apart from these restrictions, all kinds and degrees of force and many other practices may be made use of in war.

Oppenheim, vol. 2, p. 144.

As war is a contention between States for the purpose of overpowering each other, violence consisting of different sorts of force * * * are used against combatants as well as non-combatants, but with discrimination and differentiation. The purpose of the application of violence against combatants is their disablement so that they can no longer take part in the fighting. And this purpose may be realised through either killing or wounding them, or making them prisoners. As regards non-combatant members of armed forces, private enemy persons showing no hostile conduct, and officials in important positions, only minor means of force may as a rule be applied, since they do not take part in the armed contention of the belligerents.

Oppenheim, vol. 2, p. 146.

Apart from such means as are expressly prohibited by treaties or custom, all means of killing and wounding that exist or may be invented are lawful. And it matters not whether the means used are directed against single individuals, as swords and rifles, or against

large bodies of individuals, as, for instance, shrapnel, Gatlings, and mines. On the other hand, all means are unlawful that render death inevitable or that needlessly aggravate the sufferings of wounded combatants.

Oppenheim, vol. 2, p. 148.

Certain means of destruction are forbidden. It is now held that the object of warlike operations is not to wreak vengeance on the enemy or gratify personal animosity against him, but to destroy his power of resistance and induce him to make terms as soon as possible.

Lawrence, p. 414.

Inciting enemy's troops to desertion or treason.

Before quitting the Means of Injuring the Enemy, we must notice that it is considered unlawful to incite the enemy's troops to treason or desertion, a rule which was probably introduced for the mutual convenience of commanders and by a kind of chivalry between them, and which should carry with it the unlawfulness of enrolling deserters as recruits; also the allied rule that communications intended for the enemy can only be made to the highest officer in rank who is within reach. But it is not considered unlawful to stir up insurrection in the enemy's country. The projects of France in 1859 and of Prussia in 1866 to enrol Hungarian legions seem to lie on the very border between incitement to desertion and incitement to insurrection.

Westlake, vol. 2, p. 83.

Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

Lieber, art. 30.

Limitations on means of carrying on war.—On general principles it is permissible to destroy your enemy and it is immaterial how this is accomplished. But in practice the means employed are definitely restricted by international declarations and conventions, and by the laws and usages of war. Generally speaking, the means to be employed include both force and stratagem, and there is included therein the killing and disabling the enemy, forcing him by defeat and exhaustion to surrender, the investment, bombardment, or siege of his fortresses and defended places, the damage, destruction, and appropriation of property, and injury to the general resources of the country.

U. S. Manual, p. 56.

The first principle of war is that the enemy's powers of resistance must be weakened and destroyed. The means that may be employed to inflict injury on him are not, however, unlimited. They are in practice definitely restricted by international conventions and dec-

larations, and also by the customary rules of warfare. And, moreover, there are the dictates of religion, morality, civilization, and chivalry which ought to be obeyed. The means include both force and stratagem.

Edmonds and Oppenheim, art. 39.

The international agreements limiting the means of destruction of enemy combatants are contained, apart from Article 23 of the Hague Rules, in four Declarations by which the contracting parties, of which Great Britain is one, engage:

(i) "to renounce in case of war amongst themselves the employment by their military and naval forces of any projectile of a weight below 400 *grammes* (approximately 14 oz.), which is either explosive or charged with fulminating or inflammable substances";

(ii) "to abstain from the use of bullets with a hard envelope which does not entirely cover the core, or is pierced with incisions";

(iii) "to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases";

(iv) "to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature."

It is expressly forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering. Under this heading might be included such weapons as lances with a barbed head, irregularly-shaped bullets, projectiles filled with broken glass, and the like; also the scoring of the surface of bullets, the filing off the end of their hard case, and smearing on them any substance likely to inflame a wound. The prohibition is not, however, intended to apply to the use of explosives contained in mines, aerial torpedoes, or hand-grenades.

The use of poison and poisoned weapons is forbidden. By analogy this prohibition has been extended to the use of means calculated to spread contagious diseases.

The deliberate contamination of sources of water by throwing into them corpses or dead animals is a practice now confined to savage tribes. There is, however, no rule to prevent measures being taken to dry up springs, and to divert rivers and aqueducts.

Train wrecking, and setting on fire camps or military depôts, are legitimate means of injuring the enemy when carried out by members of the armed forces.

Assassination, and the killing and wounding by treachery of individuals belonging to the hostile nation or army, are not lawful acts of war, and the perpetrator of such an act has no claim to be treated as a combatant, but should be put on his trial as a war criminal. Measures should be taken to prevent such an act from being successful in case information with regard to it is forthcoming.

As a consequence of the prohibition of assassination, the proscription or outlawing of any enemy, or the putting a price on an enemy's head, or any offer for an enemy "dead or alive" is not permitted.

It is forbidden to declare that no quarter will be given.

Edmonds and Oppenheim, arts. 41–48.

Good faith is essential in war, for without it hostilities could not be terminated with any degree of safety short of the total destruction of one of the contending parties.

Edmonds and Oppenheim, Art. 140.

It may be recommended that he [the commander in chief] show all the leniency compatible with the necessities of the war toward the peaceful population, women, old men, and children.

Jacomet, p. 64.

What is permissible includes every means of war without which the object of the war cannot be obtained; what is reprehensible on the other hand includes every act of violence and destruction which is not demanded by the object of war.

It follows from these universally valid principles that wide limits are set to the subjective freedom and arbitrary judgment of the Commanding Officer; the precepts of civilization, freedom and honor, the traditions prevalent in the army, and the general usages of war, will have to guide his decisions.

German War Book, p. 84.

As a supplement to this rule, the usages of war recognize the desirability of not employing severer forms of violence if and when the object of the war may be attained by milder means, and furthermore that certain means of war which lead to unnecessary suffering are to be excluded. To such belong:

The use of poison both individually and collectively (such as poisoning of streams and food supplies) the propagation of infectious diseases.

Assassination, proscription, and outlawry of an opponent.

The use of arms which cause useless suffering, such as soft-nosed bullets, glass, etc.

The killing of wounded or prisoners who are no longer capable of offering resistance.

The refusal of quarter to soldiers who have laid down their arms and allowed themselves to be captured.

The progress of modern invention has made superfluous the express prohibition of certain old-fashioned but formerly legitimate instruments of war (chain shot, red-hot shot, pitch balls, etc.), since others, more effective, have been substituted for these; on the other hand the use of projectiles of less than 400 grammes in weight is prohibited by the St. Petersburg Convention of December 11th, 1868. (This only in the case of musketry.)

He who offends against any of these prohibitions is to be held responsible therefore by the State. If he is captured he is subject to the penalties of military law.

German War Book, p. 85.

Some forms of artifice are, however, under all circumstances irreconcilable with honorable fighting, especially all those which take the form of faithlessness, fraud, and breach of one's word. Among these are breach of a safe-conduct; of a free retirement; or of an armistice, in order to gain by a surprise attack an advantage over the enemy; feigned surrender in order to kill the enemy who then

approach unsuspiciously; misuse of a flag of truce, or of the Red Cross, in order to secure one's approach, or in case of attack, deliberate violation of a solemnly concluded obligation, *e. g.*, of a war treaty; incitement to crime, such as murder of the enemy's leaders, incendiarism, robbery, and the like. This kind of outrage was an offense against the law of nations even in the earliest times. The natural conscience of mankind whose spirit is chivalrously alive in the armies of all civilized States, has branded it as an outrage upon human right, and enemies who in such a public manner violate the laws of honor and justice have been regarded as no longer on an equality.

The views of military authorities about methods of this kind, as also of those which are on the borderline, frequently differ from the views held by notable jurists. So also the putting on of enemy's uniforms, the employment of enemy or neutral flags and marks, with the object of deception are as a rule declared permissible by the theory of the laws of war, while military writers have expressed themselves unanimously against them. The Hague Conference has adopted the latter view in forbidding the employment of enemy's uniforms and military marks equally with the misuse of flags of truce and of the Red Cross.

German War Book, p. 111.

Article 22, Annex to Hague Convention IV, 1907, is substantially identical with section 172, Austro-Hungarian Manual, 1913.

Article 23, Annex to Hague Convention IV, 1907, is substantially identical with section 173, Austro-Hungarian Manual, 1913.

POISON AND POISONED WEAPONS.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

(a) To employ poison or poisoned weapons.—*Article 23, Regulations, Hague Convention IV, 1907.*

Hence, we are forbidden to use poisoned weapons, for these add to the cruelty and calamities of a war, without conducing to its termination.

Hallock, p. 399.

The practice of poisoning wells, springs, waters, or any kind of food, for the purpose of injuring an enemy, is now also universally condemned. In addition to the reasons given for prohibiting the use of poisoned weapons, there is the additional one, that, by poisoning waters and food, we may destroy innocent persons, and non-combatants. The practice is, therefore, condemned by all civilized nations, and any state or general who should resort to such means, would be regarded as an enemy to the human race, and excluded from civilized society.

Halleck, p. 399.

Nations seem to concur in denouncing the use of poisoned weapons, the poisoning of springs or food, and the introduction of infectious or contagious diseases.

Dana's Wheaton, note 166, par. I.

The use of poisoned weapons, the poisoning of springs * * * have long been condemned, as opposed to the idea of war, which is an open honorable way of seeking redress.

Woolsey, p. 211.

Spreading contagious diseases.

And, on analogy, it has been suggested, to spread contagious diseases [is forbidden].

Holland, p. 43.

Pollution of water.

When Pemberton capitulated to Grant at Vicksburg in July, 1863, Joseph Johnston, who had been watching the siege in the hope of being able to help Pemberton, fell back towards the town of Jackson, closely pursued by Sherman. "In retreating he caused cattle, hogs, and sheep to be driven into the ponds of water and there shot down so that we had to haul their dead and stinking carcasses out to use the water." Does an act such as Johnston's amount to poisoning? The answer would seem to be no; provided it is made quite apparent what has been done. Cutting off an enemy's water supply is an

allowable act of war. A very usual method of bringing pressure on a besieged town is to turn a stream supplying it. Johnston's act elicited no complaint at the time, and in a book which is used as a textbook in the American army to-day, it is expressly mentioned as a permissible method of delaying an enemy's pursuit.

Spaight, p. 83; Sherman, *Memoirs*, vol. 1, p. 331; Wagner, *The Service of Security and Information*, p. 174.

Pollution of water.

See on this point Farrer, Military Manners and Customs, p. 29. He says it is a working rule of war that "you may not poison your enemy's drinking water, but you may infect it with dead bodies or otherwise, because that is only equivalent to turning the stream."

Spaight, p. 84; 3 note.

Pollution of water.

When Cronje was hemmed in by Lord Kitchener's troops at Paardeberg in February of the same year, many of his horses were killed by the British shells. The carcasses could not be buried, and to have left them to putrefy in the narrow circuit of the laager would almost certainly have caused an outbreak of enteric among the Boers themselves. They were therefore sent floating down the Orange River, on which the British soldiers depended for their water supply. Cronje's action was warranted by necessity and it is impossible to regard it as amounting to a deliberate poisoning of the stream.

Spaight, p. 84.

In our days, however, warfare is no longer regulated by usages only, but to a greater extent by laws, firm rules recognized either by international treaties or by universal custom. These conventional and customary rules cannot be overruled by necessity, unless they are framed in such a way as not to apply to a case of necessity in self-preservation. Thus, for instance, the rules that poisoned arms and poison are forbidden, and that it is not allowed treacherously to kill or wound individuals belonging to the hostile army, do not lose their binding force even if escape from extreme danger or the realisation of the purpose of war would result from an act of this kind.

Oppenheim, p. 84.

Pollution of water.

Savages used poisoned weapons; but civilized mankind has expelled them from its warfare, and refrains from the poisoning of food or water, or the inoculation of the enemy with disease. The secrecy and cruelty associated with death by poison, and the danger that innocent people may be made to suffer along with or instead of foes, will serve to account for the deep-seated abhorrence of such a method of destruction. Grotius condemns it as contrary to the sentiment of the best and most advanced nations, and the other text-writers agree with him. The Hague Conference *Règlement* mentions it only to exclude it from the permissible means of injuring an enemy. But the experience of the Boer War seems to show that the contamination of water by the carcasses of animals is not forbidden.

Lawrence, pp. 554, 555: *De Jure Belli ac Pacis*, bk. III, ch. iv, 15–17; Maurice, *Official History*, vol. II, p. 164.

The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

Lieber, art. 70.

In the course of military operations, the following things are prohibited:

(*a*) the use of poison or poisoned arms, with intent to injure the enemy.

Art. 11, Russian Instructions, 1904.

Spreading contagious diseases—pollution of water.

Application of rule.—This prohibition extends to the use of means calculated to spread contagious diseases, and includes the deliberate contamination of sources of water by throwing into same dead animals and all poisonous substances of any kind, but does not prohibit measures being taken to dry up springs or to divert rivers and aqueducts from their courses.

U. S. Manual, p. 57.

TREACHEROUS KILLING OR WOUNDING.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

* * * * * * *

(b) To kill or wound treacherously individuals belonging to the hostile nation or army;—*Article 23, Regulations, Hague Convention IV, 1907.*

The same may be said of assassination, or treacherously taking the life of an enemy. Not unfrequently the success of a campaign, or even the termination of the war, depends upon the life of the sovereign, or of the commanding general. Hence, in former times, it sometimes happened that a resolute person was induced to steal into the enemy's camp, under the cover of a disguise, and, having penetrated to the general's quarters, to surprise and kill him. Such an act is now deemed infamous and execrable, both in him who executes, and in him who commands, encourages, or rewards it.

Halleck, p. 400.

Surprise permissible.

But we must distinguish between a treacherous murder and a surprise, which is always allowable in war. A small force, under cover of the night, may pass the enemy's lines, penetrate to his headquarters, surprise the general, and take him prisoner or attack and kill him. It was his duty to guard against such attacks, and to prevent a surprise.

Halleck, p. 401.

Assassination is prohibited [in war].

Dana's Wheaton, note 166, par. I.

* * *, the employment of hired assassins, have long been condemned, as opposed to the idea of war, which is an open honorable way of seeking redress.

Woolsey, p. 211.

This includes not only assassination of individuals, but also, by implication, any offer for an individual "dead or alive."

Holland, p. 43.

The word "Treachery" in Article XXIII (*b*) seems hardly applicable to an enemy's act, and one of the Brussels delegates proposed to substitute "perfidy" for it. The original word was, however, retained, as being the equivalent of the German *Meuchelmord* ("murder by treachery"). There may quite as well be treachery under the laws of war, as under municipal law.

Spaight, p. 86; Brussels B. B., p. 284.

It is treachery when a man throws up his hands in token of surrender and then seizes his rifle again and shoots his trusting enemy. Three Boers were sentenced to death and shot for perpetrating such an act as this on 26th October, 1900, at Frederikstad, Transvaal.

Spaight, p. 87.

Another customary rule, now likewise enacted by article 23 (b) of the Hague Regulations, prohibits any treacherous way of killing and wounding combatants. Accordingly: no assassin must be hired and no assassination of combatants be committed; a price may not be put on the head of an enemy individual; proscription and outlawing are prohibited; no treacherous request for quarter must be made; no treacherous simulation of sickness or wounds is permitted.

Oppenheim, p. 148.

Distinction between surprise and assassination.

The life of some one person is often of the last importance to a cause, and when that is the case its enemies are under great temptation to get rid of its champion by murder, if all other means fail. Such assassinations for public purposes seem to have been regarded with approval in ancient and mediaeval times. Grotius, in the course of an elaborate discussion of the subject, indicates the all-important point, which is not the act of killing, but the presence or absence of bad faith or treachery in the surrounding circumstances. Modern International Law distinguishes between dashes made at a ruler or commander by an individual or a little band of individuals who come as open enemies, and similar attempts made by those who disguise their enemy character. A man who steals secretly into the opposing camp in the dark, and makes alone or with others a sudden attack in uniform upon the tent of king or general, is a brave and devoted soldier. A man who obtains admission to the same tent disguised as a pedler, and stabs its occupant when lured into a false security, is a vile assassin, and the attempt to procure such a murder is as criminal as the murder itself.

Lawrence, pp. 553, 554; *De Jure Belli ac Pacis*, bk. III, ch. iv, 18.

The giving and receiving quarter is a tacit convention or at least a convention the terms of which are not fully expressed, and if one who has yielded himself a prisoner should shoot his captor after he had passed on, or should shoot any other soldier of the enemy, he would be guilty of bad faith and would justly have forfeited his life.

When it is prohibited in H XXIII (b) to kill or wound individuals treacherously, cases such as those last mentioned are included, but the notion of treachery is wider than what without straining language can be described as breach of convention, and will certainly now cover acts which have not been always condemned. To appreciate it we must take account of the modern notion of war as the posecution of a public quarrel *militari manu*, in which individuals are not to be affected except so far as the military proceedings, with their necessary adjuncts and consequences, may touch them. It followr from this that killing individuals, outside the cases of fighting os military punishment to which they have made themselves liabler is killing persons who have had no reason to put themselves on their guard, and is therefore treacherous killing. Not only is it unlawful

to employ murderers, but to set a price on the head of an individual, to offer a reward for bringing in an individual "dead or alive," or to outlaw him is unlawful as tending to murder and encouraging it.

Westlake, vol. 2, p. 81.

Outlawry.

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.

Lieber, art. 148.

Assassination and outlawry.—Civilized nations look with horror upon offers of rewards for the assassination of enemies, and the perpetrator of such an act has no claim to be treated as a combatant, but should be treated as a criminal. So, too, the proclaiming of an individual belonging to the hostile army, or a citizen or subject of the hostile government, an outlaw, who may be slain without trial by a captor. The article includes not only assaults upon individuals, but as well any offer for an individual "dead or alive."

U. S. Manual, p. 57.

It is expressly forbidden by the Hague Rules to kill or wound by treachery individuals belonging to the hostile nation or army.

Edmonds and Oppenheim, art. 143.

Provoking the assassination of an enemy by gifts or promises is forbidden.

Declaring an enemy to be beyond the pale of the law is forbidden.

Jacomet, p. 58.

KILLING OR WOUNDING OF SURRENDERED FOE.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

* * * * * * *

(*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion.—*Article 23, Regulations, Hague Convention IV, 1907.*

It is forbidden:

* * * * * * *

b. To injure or kill an enemy who has surrendered at discretion or is disabled, * * *

Institute, 1880, p. 30.

We may wound an enemy in order to disable him, but, when so disabled, we have no right to take his life; we, therefore, cannot introduce poison into that wound so as, subsequently, to cause his death.

Halleck, p. 399.

But this extreme right of war, with respect to the enemy's person, has been modified and limited by the usages and practices of modern warfare. Thus, while we may lawfully kill those who are actually in arms and continue to resist, we may not take the lives of those who are not in arms, or who, being in arms, cease their resistance and surrender themselves into our power. The just ends of the war may be attained by making them our prisoners, or by compelling them to give security for their future conduct. Force and severity can be used only so far as may be necessary to accomplish the objects for which the war was declared.

Halleck, p. 426.

As the right to kill an enemy, in war, is applicable only to such public enemies as make forcible resistance, this right necessarily ceases so soon as the enemy lays down his arms and surrenders his person. After such surrender, the opposing belligerent has no power over his life, unless new rights are given by some new attempt at resistance.

Halleck, p. 429.

A belligerent has, therefore, no right to take away the lives of those subjects of the enemy whom he can subdue by any other means. Those who are actually in arms, and continue to resist, may be lawfully killed; but the inhabitants of the enemy's country who are not in arms, or who, being in arms, submit and surrender themselves,

may not be slain, because their destruction is not necessary for obtaining the just ends of war. Those ends may be accomplished by making prisoners of those who are taken in arms, or compelling them to give security that they will not bear arms against the victor for a limited period, or during the continuance of the war.

Dana's Wheaton, p. 427.

According to the law of war, as still practised by savage nations, prisoners taken in war are put to death. Among the more polished nations of antiquity, this practice gradually gave way to that of making slaves of them. For this, again, was substituted that of ransoming, which continued through the feudal wars of the Middle Age. The present usage of exchanging prisoners was not firmly established in Europe until some time in the course of the seventeenth century. Even now, this usage is not obligatory among nations who choose to insist upon a ransom for the prisoners taken by them, or to leave their own countrymen in the enemy's hands until the termination of the war.

Dana's Wheaton, p. 429.

For the two centuries past, cruelty to prisoners and non-resisting soldiers has been exceptional. The present practice is to spare the lives of those who yield themselves up, to exchange them with captives taken by the other party, or to give them up on payment of a ransom, and meanwhile "to supply them with the necessary comforts at the expense of the state to which they belong."

Woolsey, pp. 215, 216.

Quarter as affected by continuance of resistance.

It may be a question up to what moment acts of violence may be continued without disentitling the doer to be ultimately admitted to the benefit of quarter under this clause.

An offer to surrender is frequently communicated by the hoisting of a white flag, which, however, can protect only the force by which it is hoisted.

Holland, p. 43.

The right to kill and wound armed enemies is subordinated to the condition that those enemies shall be able and willing to continue their resistance. It is unnecessary to kill men who are incapacitated by wounds from doing harm, or who are ready to surrender as prisoners. A belligerent therefore may only kill those enemies whom he is permitted to attack while a combat is actually in progress; he may not as a general rule refuse quarter; and he can not mutilate or maim those who fall into his power.

Hall, pp. 413, 414.

In spite of this accumulated evidence that up to a late period the usages of war allowed a garrison to be massacred for doing their duty to their country, there can be no hesitation in excluding the practice from the list of those which are now permitted. It is wholly opposed to the spirit of the general body of the laws of war, and it therefore can only pretend to rank as an exceptional usage. But for an exceptional usage to possess validity in opposition to general principles

of law it must be able to point to a continued practical recognition, which the usage in question is unable to show.

There is probably no modern instance of the indiscriminate slaughter of a garrison, except that of the massacre of the garrison and people of Ismail by the Russians in 1790, and if one instance were now to occur, the present temper of the civilized world would render a second impossible.

Hall, pp. 415, 416, *note*.

Quarter as affected by imperative necessity—reprisals.

The whole question of reprisals was left undecided at Brussels (as it still remains), and the provision as to the refusal of quarter in cases of extreme necessity was also omitted from the final project. The right of a commander to refuse quarter in such circumstances is admitted in the *American Instructions* (Article 60) and in the *Kriegsbrauch im Landkriege* (p. 16), which authorises the destruction of prisoners "in case of imperative necessity, when there is no other means of keeping them and their presence constitutes a danger to the very existence of the captors." And this view of the General Staff jurist is backed by the weightier authority of Bluntschli. The *Oxford Manual*, like the French and German official manuals, is silent on the point. One can hardly say, with M. Paul Carpentier (p. 176, French translation of the *Kriegsbrauch im Landkriege*) that in one case only can the *quasi*-contract established between the captor and the prisoner at the moment of capture, under which the latter's life is assured, be violated by the execution of the prisoner: namely, when he plots or actually attempts to escape. For usage and theory allow reprisals to be inflicted upon prisoners of war. But there is no doubt that not only practice but all the weight of modern expert opinion are in the scale against Bluntschli's view. As Hall remarks, "the evil of increasing the strength of the enemy is less than that of violating the dictates of humanity," and modern practice has endorsed this view, in that it has seen no deliberate slaughter of men outside of "chaud medley." The Boer commandants have had the honor of setting a high example of practice in this matter. Except in the early stages of the war, they found it impossible to retain their prisoners, yet they invariably released those whom they captured and usually at once. The same was done by the British troops on a smaller scale in the Crimea: the 17th Lancers captured many prisoners in the pursuit after the Battle of the Alma, but being unable to bring them in, allowed them to go.

Spaight, p. 89; Bluntschli, Art. 580; Hall, p. 397.

Quarter as affected by continuance of resistance.

In the British official manual of *Laws and Customs of War*, Professor Holland remarks that

> It may be a question up to what moment acts of violence may be continued without disentitling the doer to be ultimately admitted to the benefit of quarter under this clause (i. e., Article XXIII (c)).

One might raise the objection to this statement that it seems to imply the existence of a war right of refusing quarter in the case of a very brave and obstinate resistance; but it undoubtedly contains a

very real truth, abundantly proved in modern wars, namely, that it is often impracticable to grant quarter to troops who resist to the last moment. No war right of killing is recognised in such circumstances; it is simply the necessity of war which justifies the refusal of quarter. It must often happen that in the storming of a trench, when men's blood is aboil and all is turmoil and confusion, many are cut down or bayoneted who wish to surrender but who can not be separated from those who continue to resist. When a whole trenchful of men show unmistakable signs of surrender, then well-disciplined troops will always grant them quarter, even at the eleventh hour.

Spaight, p. 91

Every combatant may be killed or wounded, whether a private soldier or an officer, or even the monarch or a member of his family. Some publicists assert that it is a usage of warfare not to aim at a sovereign or a member of his family. Be that as it may, there is in strict law no rule preventing the killing and wounding of such illustrious persons. But combatants may only be killed or wounded if they are able and willing to fight or to resist capture. Therefore, such combatants as are disabled by sickness or wounds may not be killed. Further, such combatants as lay down arms and surrender or do not resist being made prisoners may neither be killed nor wounded, but must be given quarter.

Oppenheim, vol. 2, p. 146.

The Boers frequently during the South African War set free British soldiers whom they had captured.

Oppenheim, vol. 2, p. 147, note.

When an armed enemy ceases to fight and asks for mercy, he is said to solicit quarter; and when his life is spared and he is made prisoner, quarter is said to have been granted to him. The slaughter of the vanquished was a common incident of warfare till about the end of the sixteenth century, when it began to be deemed obligatory to give quarter to those who surrendered and begged for life. But for some time longer the rule in favor of it was frequently disregarded, or suspended altogether with regard to certain classes of combatants, as, for instance, Croats and Pomeranians in the Thirty Years' War, and Irish royalists in the English civil war between King and Parliament. The more humane practice, however, steadily won its way till it became a part of the code of military honor. According to modern ideas quarter can be refused only when those who ask for it attempt to destroy those who have shown them mercy. But it must be remembered that in a charge, and especially a cavalry charge, it is almost impossible to distinguish between those who wish to surrender and those who are determined to die fighting.

Lawrence, p. 396.

The twenty-third Article of the Hague Regulations declares that it is particularly forbidden "to kill or wound an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion" and also "to declare that no quarter will be given." In view of the history of war we should note carefully that these rules contain no saving clauses. The conquerors of antiquity generally put

to death all the defenders of besieged places. In the Middle Ages it was deemed an offence for a garrison to prolong a resistance that the besiegers regarded as fruitless, and if the place was finally given up, some of them were executed. Even in comparatively recent times, when a fortress was taken by assault, the fighting men could claim no mercy.

Lawrence, p. 396.

Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.

Lieber, art. 71.

Penalty for violation.— War is for the purpose of overcoming armed resistance, and no vengeance can be taken because an individual has done his duty to the last. And "whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States or is an enemy captured after having committed the misdeed."

U. S. Manual, p. 58.

It is forbidden to kill or wound an enemy who having laid down his arms, or having no longer means of defence, has surrendered at discretion.

Edmonds and Oppenheim, art. 50.

Exception in case of barbarous enemy.

"'When at war' (says Vattel) 'with a ferocious nation which observes no rules, and grants no quarter, they may be chastised in the persons of those of them who may be taken; they are of the number of the guilty; and by this rigor the attempt may be made of bringing them to a sense of the laws of humanity.' And again: 'As a general has the right of sacrificing the lives of his enemies to his own safety, or that of his people, if he has to contend with an inhuman enemy, often guilty of such excesses, he may take the lives of some of his prisoners, and treat them as his own people have been treated.' The justification of these principles is found in their salutary efficacy for terror and for example.

"It is thus only that the barbarities of Indians can be successfully encountered. It is thus only that the worse than Indian barbarities of European imposters, pretending authority from their governments, but always disavowed, can be punished and arrested * * *

"The two Englishmen executed by order of General Jackson were not only identified with the savages, with whom they were carrying on the war against the United States, but that one of them was the mover and fomenter of the war, which, without his interference, and false promises to the Indians of support from the British Government, never would have happened. The other was the instrument of war against Spain as well as the United States, commissioned by McGregor, and expedited by Woodbine, upon their project of conquering Florida with these Indians and negroes; that, as accomplices of the

savages, and, sinning against their better knowledge, worse than savages, General Jackson, possessed of their persons and of the proofs of their guilt, might, by the lawful and ordinary usages of war, have hung them both without the formality of a trial; that, to allow them every possible opportunity of refuting the proofs, or of showing any circumstance in extenuation of their crimes, he gave them the benefit of trial by a court-martial of highly respectable officers; that the defence of one consisted solely and exclusively of technical cavils at the nature of part of the evidence against him, and the other confessed his guilt."

Mr. Adams, Sec. of State, to Mr. Erving, min. to Spain, Nov. 28, 1818, 4 Am. State Papers, For. Rel. 539, 544; Moore's Digest, vol. 7, pp. 207, 208.

Exception in case of barbarous enemy.

"The necessity of my reviewing with particularity the proofs against each of these unhappy sufferers (Arbuthnot and Ambrister) had been superseded, I observed, by what had passed at our interview (Mr. Rush and Lord Castlereagh) on the seventh. This Government itself had acquiesced in the reality of their offenses. I would content myself with superadding that the President believes that these two individuals, in connection with Nicholls and Woodbine, had been the prime movers in the recent Indian war. That without their instigation it never would have taken place, any more than the butcheries which preceded and provoked it; the butchery of Mrs. Garrett and her children; the butchery of a boat's crew, with a midshipman at their head, deputed from a national vessel, and ascending in time of peace the Appalachicola on a lawful errand; the butchery in time of peace at one stroke, upon another occasion, of a party of more than thirty Americans, amongst which were both women and children, with many other butcheries alike authentic and shocking.

Mr. Rush, min. at London, to Mr. J. Q. Adams, Sec. of State, Jan. 12, 1819, Moore's Digest, vol. 7, p. 210.

GIVING OF QUARTER.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

* * * * * * *

(*d*) **To declare that no quarter will be given.**—*Article 23, Regulations, Hague Convention IV, 1907.*

It is forbidden:

* * * * * * *

b. * * * to declare in advance that quarter will not be given, even by those who do not ask it for themselves.

Institute, 1880, p. 30.

Obstinate resistance by weak force.

It was an ancient maxim of war, that a weak garrison forfeit all claim to mercy on the part of the conqueror, when, with more courage than prudence, they obstinately persevere in defending an ill-fortified place against a large army, and when, refusing to accept of reasonable conditions offered to them, they undertake to arrest the progress of a power which they are unable to resist. Pursuant to this maxim, Caesar answered the Aduatici that he would spare their town, if they surrendered before the battering-ram touched their walls. But, though sometimes practiced in modern warfare, it is generally condemned as contrary to humanity and inconsistent with the principles which, among civilized and christian nations, form the basis of the laws of war.

Halleck, p. 440.

In the Thirty Years' War Gustavus Adolphus made a convention with the Imperialists to give and receive quarter: only the Croats on one side, and the Pomeranians on the other, were excepted from this act of humanity.

Woolsey, p. 215.

Exceptions.

The general duty to give quarter does not protect an enemy who has personally violated the laws of war, who has declared his intention of refusing to grant quarter or of violating those laws in any grave manner, or whose government or commander has done acts which justify reprisals. It may be doubted however whether the right of punishment which is thus placed in the hands of a belligerent has been used within the present century in any strictly international war, and though its existence may be a wholesome check to the savage instincts of human nature which now and then break through the crust of civilized habit, it is certain that it ought only to be sparingly exercised after great and continuous provocation, and

that any belligerent who availed himself of his power would be judged with extreme severity.

An exception to the rule that quarter can not be refused is also supposed to arise when from special circumstances it is impossible for a force to be encumbered with prisoners without danger to itself Instances of such impossibility have not presented themselves in modern warfare. Prisoners who can not safely be kept can be liberated, and the evil of increasing the strength of the enemy is less than that of violating the dictates of humanity, unless there is reason to expect that the prisoners if liberated, or a force successfully attempting rescue, would massacre or ill-treat the captors. Subject to the condition that there shall be reasonable ground for such expectation it may be admitted that cases might occur in which the right could be legitimately exercised both at sea, and in campaigns resembling those of the Indian Mutiny, when small bodies of troops remained for a long time isolated in the midst of enemies.

Hall, pp. 414, 415.

Exceptions—reprisals and "imperative necessity."

Hague Regulations 23 (*d*) stipulate that belligerents are prohibited from declaring that no quarter will be given, quarter may nevertheless be refused by way of reprisal for violations of the rules of warfare committed by the other side; and, further, in case of imperative necessity, when the granting of quarter would so encumber a force with prisoners that its own security would thereby be vitally imperilled. But it must be emphasised that the mere fact that numerous prisoners cannot safely be guarded and fed by the captors does not furnish an exceptional case to the rule, provided that no vital danger to the captors is therein involved. And it must likewise be emphasised that the former rule is now obsolete according to which quarter could be refused to the garrison of a fortress carried by assault, to the defenders of an unfortified place against an attack of artillery, and to the weak garrison who obstinately and uselessly persevered in defending a fortified place against overwhelming enemy forces.

Oppenheim, vol. 2, p. 147.

Garrisons captured by assault.

The twenty-third Article of the Hague Regulations declares that it is particularly forbidden "to kill or wound an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion" and also "to declare that no quarter will be given." In view of the history of war we should note carefully that these rules contain no saving clauses. The conquerors of antiquity generally put to death all the defenders of besieged places. In the Middle Ages it was deemed an offence for a garrison to prolong a resistance that the besiegers regarded as fruitless, and if the place was finally given up, some of them were executed. Even in comparatively recent times, when a fortress was taken by assault, the fighting men could claim no mercy. This was the opinion of the great Duke of Wellington, who wrote, "I believe it has always been understood that the defenders of a fortress stormed have no right to quarter." His own practice was more merciful. When he carried a place by storm, he accepted the surrender of those of the garrison

who survived the struggle. The growth of this humane practice has been fostered by a change in the conditions of warfare. Towns are now defended by forts and earthworks erected at a considerable distance from them. When some of these are taken, the place becomes untenable, and is surrendered, as was Port Arthur in 1905 as soon as the Japanese captured 203-meter hill. Recent conflicts between civilized powers have afforded no instance of the slaughter of a garrison. And when the time came to formulate the laws of war by international agreement, no attempt was made to restore the old severity, but the obligation to give quarter was imposed in the widest terms.

Lawrence, pp. 396, 397; Despatches, 2d Series, vol. I, pp. 93, 94.

Exception—"imperative necessity."

H XXIII (d) denounces an ancient practice of declaring that no quarter will be given, especially used for terrifying besieged places into surrender, and, read in the spirit rather than in the letter, consecrates the modern practice of giving quarter whenever practicable. The admitted case in which it is not practicable is that which occurs during the continuance of fighting, when the achievement of victory would be hindered and even endangered by stopping to give quarter instead of cutting down the enemy and rushing on, not to mention that during the fighting it is often impracticable so to secure prisoners as to prevent their return to the combat. Hence it is especially difficult to avoid ruthless slaughter in the storm of a place or of a position, but the rule formerly dictated by military pride, that those are not entitled to quarter who insult a superior force by defending a place after a breach has been made and the counterscarp blown in, or who defend an ill fortified place at all against a superior force, is entirely obsolete and condemned. Another case, rather asserted than admitted, is that which occurs "when from special circumstances it is impossible for a force to be encumbered with prisoners without danger to itself." On this I agree with Hall's remark that "prisoners who cannot safely be kept can be liberated," and, remembering that they are or may be disarmed, we can scarcely treat as more than theoretical the danger that they may be rescued and re-armed by a relieving force.

Westlake, vol. 2, p. 81; Hall, sec. 129.

Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter.

Lieber, art. 66.

It is no longer contemplated that quarter will be refused to the garrison of a fortress carried by assault, to the defenders of an undefended place who did not surrender when threatened with bombardment, or to a weak garrison which obstinately and uselessly persevered in defending a fortified place against overwhelming odds.

U. S. Manual, p. 58.

MEANS WHICH CAUSE UNNECESSARY SUFFERING.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

* * * * * * *

(*e*) **To employ arms, projectiles, or material calculated to cause unnecessary suffering.**—*Article 28, Regulations, Hague Convention IV, 1907.*

The Contracting Parties agree to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

Hague Declaration, 1899.

The Contracting Powers agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases.

Hague Declaration, 1899.

The Contracting Powers agree to prohibit, for a term of five years, the launching of projectiles and explosives from balloons, or by other new methods of similar nature.

Hague Declaration, 1899.

The Contracting Powers agree to prohibit, for a period extending to the close of the Third Peace Conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature.

Hague Declaration, 1907.

It is forbidden:

a. To employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds,—notably projectiles of less weight than four hundred grams which are explosive or are charged with fulminating or inflammable substances. (Declaration of St. Petersburg.)

Institute, 1880, pp. 29, 30.

The contracting parties engage mutually to renounce in case of war among themselves the employment by their military or naval troops of any projectile of a weight less than 400 grammes [about 13½ ounces] which is either explosive or charged with fulminating or inflammable substances.

Declaration of St. Petersburg, 1868.

As to the nature of weapons not poisoned, there is, and perhaps can be, no rule. Concealed modes of extensive destruction are allowed, as torpedoes to blow up ships, or strewed over the ground

before an advancing foe, and mines; nor is the destructiveness of a weapon any objection to its use. Hot shot is permitted, and bombshells, to set fire to a vessel or camps or forts; but it is not thought justifiable to use chemical compounds which may maim or torture the enemy. It seems to be thought that a steam-vessel, on the defensive, may throw her steam or boiling water upon boarders. Assassination is prohibited. As war will avail itself of science in all departments, for offence and defence, perhaps the only test, in case of open contests between acknowledged combatants, is, that the material shall not owe its efficacy, or the fear it may inspire, to a distinct quality of producing pain, or of causing or increasing the chances of death to individuals, or spreading death or disability, if this quality is something else than the application of direct force, and of a kind that cannot be met by countervailing force, or remedied by the usual medical and surgical applications for forcible injuries, or averted by retreat or surrender. Starving a belligerent force, by cutting off food or water, is also lawful; for that may be so averted.

Dana's Wheaton, p. 428, note 166.

The rules which lie at the basis of a humane system of war are—

1. That peace is the normal state of Christian nations, to which they are bound to seek to return from the temporary and exceptional interruptions of war.

2. That redress of injuries and not conquest or plunder is the lawful motive in war; and that no rule of morality or justice can be sacrificed in the mode of warfare.

3. That war is waged between governments by persons whom they authorize, and is not waged against the passive inhabitants of a country.

4. That the smallest amount of injury, consistent with self-defense and the sad necessity of war, is to be inflicted. And, finally,

5. That the duties implied in the improved usages of war, so far as they are not of positive obligation, are reciprocal, like very many rules of intercourse between states, so as not to be binding on one belligerent, as long as they are violated by the other.

Woolsey, pp. 210, 211.

The laws of war are now tolerably definite in regard to the instruments of death whose use is lawful against an enemy. Many of the projectiles formerly objected to, such as chain shot and bar shot, have become obsolete, being impracticable with rifled cannon. Far more deadly inventions have the field, and are not illegal. The torpedo, fixed or projected, machine gun, magazine rifle, high explosives, projectiles of greater range, all the recent improvements in the means of destruction are welcomed and immediately adopted. They have revolutionized the formation of troops in battle; they have made the spade a military implement more indispensable than ever; they have so increased the casualties of a day's fight as to make outside help necessary for the care of the wounded. On the other hand, by these very changes wars have been shortened; the sufferings of non-combatants lessened; in fact, hand in hand with their introduction has come a humaner spirit and practice in every department of warfare. The test of instruments of war, then, is found not in their capacity for inflicting death, but in their capacity for causing aggra-

vated or unnecessary suffering. Thus, a copper bullet poisoning its wound, a small explosive bullet shattering its victim, a detachable lance head, a barbed bayonet, would all be illegal.

Woolsey, pp. 212, 213.

On the whole it may be said generally that weapons are illegitimate which render death inevitable or inflict distinctly more suffering than others, without proportionately crippling the enemy. Thus poisoned arms have long been forbidden, and guns must not be loaded with nails or bits of iron of irregular shape. To these customary prohibitions the European powers, except Spain, have added as between themselves the abandonment of the right to use explosive projectiles weighing less than fourteen ounces; and in the declaration of St. Petersburg, by which the renunciation of the right was effected in 1868, they took occasion to lay down that the object of the use of weapons in war is 'to disable the greatest possible number of men, that this object would be exceeded by the employment of arms which needlessly aggravate the sufferings of disabled men, or render their death inevitable, and that the employment of such arms would therefore be contrary to the laws of humanity.' On the other hand, the amount of destruction or of suffering which may be caused is immaterial if the result obtained is conceived to be proportionate. Thus no objection has ever been made to mines; it is not thought improper to ram a vessel so as to sink her with all on board; and torpedoes have been received without protest among the modern engines of war.

Hall, pp. 552, 553.

A customary rule of International Law, now expressly enacted by article 23 (e) of the Hague Regulations, prohibits, therefore, the employment of poison and of such arms, projectiles, and material as cause unnecessary injury. Accordingly: wells, pumps, rivers, and the like from which the enemy draws drinking water must not be poisoned, poisoned weapons must not be made use of; rifles must not be loaded with bits of glass, irregularly shaped iron, nails, and the like; cannons must not be loaded with chain shot, crossbar shot, red-hot balls, and the like.

Oppenheim, vol. 2, p. 148.

Dum-Dum bullets.

Great Britain had introduced bullets manufactured at the Indian arsenal of Dum-Dum, near Calcutta, the hard jacket of which did not quite cover the core and which therefore easily expanded and flattened in the human body.

Oppenheim, vol. 2, p. 149.

Violence from air-craft.

Although it is very much to be regretted, the fact must be taken into consideration that in future violence directed from air-vessels will play a great part in war. For this reason, the question as to the conditions under which such violence is admissible, is of importance, but it is as yet impossible to give a satisfactory answer. * * * However this may be, there can be no doubt that the general principles laid down in the Declaration of St. Petersburg of 1868, in the

two Declarations, adopted by the First Peace Conference, concerning expanding bullets and projectiles diffusing asphyxiating or deleterious gases, in the Hague rules concerning land warfare, and the like, must find application as regards violence directed from air vessels.

Oppenheim, vol. 2, pp. 150, 151.

Consequently any applications of force that inflict more pain and suffering than is necessary in order to attain this end are forbidden by modern International Law. An ordinary bullet, for instance, will disable an arm, and render its possessor useless as a fighting man, just as well as an explosive bullet, or a scrap of iron or glass, which inflict a jagged wound very difficult to heal. The use of such missiles is therefore prohibited; and the principle that condemns them is applied in other directions also.

Lawrence, p. 414.

When once it was generally admitted that the limit of a belligerent's moral right to inflict pain and injury was reached when he had destroyed his adversary's power of resistance, applications of this principle to the kind of projectiles he might fire from his guns were certain to be made. Even before civilized states had practically agreed that the only legitimate object of warlike operations is to weaken the forces of the enemy and induce him to sue for terms, they began to object to certain means of destruction. Sometimes the ground of objection was their newness, sometimes their secrecy, and sometimes the vastness or cruelty of their destructive force. In one age the cross-bow was anathematized, in another the arquebus, in a third the bayonet. There was a long controversy about red-hot shot till the invention of rifled cannon rendered it obsolete. In the eighteenth and nineteenth centuries a customary rule against the use of what was technically called "langridge" grew up. The term includes nails, buttons, bits of glass, knife-blades, and any kind of rubbish that can be fired out of a gun. Such missiles inflicted jagged wounds without being one whit more effective than bullets in preventing combatants from continuing the fight. Objections to them were doubtless based largely on sentiment and considerations of military honor; but there was also a more or less conscious application of the true principle, which measures the illegality of weapons, not by their destructiveness, but by the amount of unnecessary suffering they inflict. Fighting men may be wounded or slain in wholesale fashion, but they may not be tortured. The use of torpedoes, for instance, is perfectly lawful, though they may hurl a whole ship's crew into eternity without a moment's warning; but the deliberate insertion of a drop of sulphuric acid into the head of a bullet, from which it would exude on contact with human flesh, would be execrated as a gross violation of the laws of civilized warfare. No objection was made to the revival of hand grenades in the Russo-Japanese War; but when expanding bullets were resorted to on a few occasions in the South African War, Britain and Boer accused each other of callous illegality.

The first appearance of rules founded on this principle in law-making international documents dates from 1868, when a large number of powers sent delegates to a Military Commission at St. Peters-

burg, the result of which was a Declaration prohibiting the use of explosive projectiles weighting less than fourteen ounces. It has been signed by many powers, and was incorporated by reference in the Hague Code for land warfare, when the twenty-third Article added "the prohibitions provided by special conventions" to a number of others expressly mentioned and described. Its object was to prevent the introduction of explosive bullets that might shatter an arm or a leg, without ruling out ordinary shells which burst on falling and scatter a shower of missiles.

Lawrence, pp. 543, 544.

Bombardment from air-craft.

The first [Declaration inserted in the Final Act of the first Peace Conference] bound the contracting parties to prohibit for five years "the discharge of projectiles and explosives from balloons, or by other similar new methods." * * * Great Britain refused to sign the first of these Declarations in 1899, but accepted it in 1907, when it was reënacted till the end of the next Conference. But on that occasion Germany, France, Italy, Japan, and Russia would not bind themselves by it, and several less important military powers followed their example. It seems as if the attempt to rule out of civilized warfare bombardment from balloons or aëroplanes was doomed to failure. And certainly it would be difficult to show that the launching of projectiles in such a manner was contrary to the principle that no unnecessary suffering should be inflicted, always supposing that the aërial artillerymen attacked no open and undefended place, and avoided in their discharges the buildings and localities exempted by the modern rules of war.

Lawrence, p. 545.

Asphyxiating gases.

The second [Declaration inserted in the Final Act of the First Peace Conference] forbade "the use of projectiles the only object of which is the diffusion of asphyxiating or deleterious gases." * * *

The second Declaration was subject to no time limit, and therefore still holds good. Yet it is not easy to see how quick asphyxiation exceeds in cruelty the blowing of a human body to pieces by the bursting of a shell. Slow torture by chemical methods might well be forbidden; but immediate death after inhaling deleterious fumes is comparable to drowning, which is often the fate of seamen in a naval engagement.

Lawrence, p. 545.

Dum-dum bullets.

The third [Declaration inserted in the Final Act of the First Peace Conference] provided for abstention from "the use of bullets which expand or flatten easily in the human body." * * *

The third Declaration, like the second, was passed without a clause providing for its expiry after a fixed period of years. Great Britain and the United States declined to sign it in 1899, but the former gave in her adhesion in 1907. It comes clearly within the fundamental principle we have seen reason to enunciate; for a bullet which by expanding or exploding shatters a limb to pieces tortures the man it hits, but does not render him more incapable of continu-

ing the fight than he would have been if shot by a bullet that inflicts a clean wound. The hesitation of Great Britain, and the continued refusal of the United States to sign, were due to the same cause. Both countries drew a distinction between explosive and expanding bullets, and maintained that the latter did not inflict unnecessary cruelty, especially in warfare with wild tribes whose rushes it was necessary to stop. The United States, acting on the view that the Declaration as adopted by the Conference did not include several kinds of bullets which cause needless laceration of tissues, suggested a formula which would have forbidden "every kind of bullet which exceeds the limit necessary for placing a man immediately *hors de combat,*" but discussion of it was ruled out on points of order. The adhesion of Great Britain and Portugal in 1907 leaves the United States in the position of being the only member of the first Hague Conference that is not bound by the Declaration. The signatures of the Latin-American States which attended the second Conference, but not the first, are also wanting. The result is that bullets of a kind forbidden in Europe can be used in warfare between American powers. In matters such as these it is highly desirable that civilization should speak with no uncertain voice; and we may hope that the third Hague Conference will find means of bringing about the necessary unanimity.

Lawrence, pp. 545, 546.

The attempts which have been made to forbid the introduction of new inventions into warfare, or prevent the use of instruments that cause destruction on a large scale, are doomed to failure. Man always has improved his weapons, and always will as long as he has need for them at all. But we can hope for a general recognition of the inutility as well as the cruelty of adding torture to disablement. Suffering there must be, as long as there is war. But unnecessary suffering ought to be, and can be abolished.

Lawrence, pp. 546, 547.

Bombardment from air-craft.

* * * of the eight great powers—Great Britain, the United States, Austria-Hungary, Japan, and the other powers of the Triple Alliance and the Triple Entente—only the three first named became bound by it. [Declaration XIV, Hague Conference, 1907]. If, as is most probable, the great powers are on an equality in the command of the skill and material necessary for the employment of the means prohibited, the prohibition cannot be charged with partiality to any of them, while the civil population cannot be protected from danger if bombs may be dropped from the sky. Therefore in my judgment the prohibition ought to be made perpetual. But the Institute of International Law, at its Madrid meeting in 1911, resolved that "aerial war is permitted, but on the condition of not presenting greater dangers than land or sea war for the persons or properties of the peaceful population." But who shall measure the proportion of the dangers? And the true question is not whether the danger is greater than those to which mankind has become accustomed, but whether it is not a new danger to which there is no reason that mankind should be exposed.

Westlake, vol. 2, p. 77; 24 *Annuaire,* p. 46.

Asphyxiating gases.

This declaration, [IV, 2, Hague Conference, 1899] has now been signed and ratified by all the powers represented at the Conference of 1899, except the United States of America, the objections of which were summed up by Captain Mahan in the words that "if and when a shell emitting asphyxiating gases has been successfully produced, then and not before will men be able to vote intelligently on the subject." Not containing any limit of time it did not need to be brought forward again in 1907, but the powers which were represented only in 1907 have not yet acceded to it.

Westlake, pp. 77, 78.

Dum-dum bullets.

This declaration [IV, 3, Hague Conference, 1899] also which was introduced in 1899 and being unlimited in time needed no repetition in 1907, has now been signed and ratified by all the powers represented in 1899 except the United States, but not by those represented only in 1907. The expansive bullets against which it is directed, are commonly called Dum-dum bullets, from the factory in India where they were first made, it having been found in the British frontier wars that the impact of an ordinary bullet did not give a shock sufficient to stop the onrush of certain assailants, so that the suffering caused to such assailants by their expansion in the body was not useless, and did not bring them within the principle of the condemnation of explosive bullets by the Declaration of St. Petersburg. However that may be, the intention of using the Dum-dum bullets in ordinary war was always disclaimed by Great Britain, and they were not employed by her in the South African war.

Westlake, p. 78.

The missiles "of a nature to cause superfluous injury," prohibited by H XXIII (e), are understood to include glass, nails, and bits of iron of irregular shape. Many writers include red-hot shot in the prohibition, which may be admitted when they would be directed only against men, but their utility in causing the destruction of things cannot always be foregone, even when the fate of men may be involved with that of the things. Red-hot shot saved Gibraltar in the great siege by setting the Spanish rafts on fire.

Westlake, vol. 2, p. 82.

In the course of military operations, the following things are prohibited:

(*a*) * * * the use of arms, machines and materials which may cause useless suffering.

Art. 11, Russian Instructions, 1904.

What included in prohibition.—The foregoing prohibition is not intended to apply to the use of explosives contained in artillery projectiles, mines, aerial torpedoes, or hand grenades, but it does include the use of lances with barbed heads, irregular-shaped bullets, projectiles filled with glass, etc., and the use of any substance on these bullets that would tend to unnecessarily inflame a wound inflicted by them, and the scoring of the surface or filing off the ends of

the hard case of such bullets. It is believed that this prohibition extends to the use of soft-nosed and explosive bullets, mentioned in paragraph 175 and note.

U. S. Manual, p. 58.

Train wrecking, etc.—Train wrecking and setting on fire camps or military depots are legitimate means of injuring the enemy when carried out by the members of the armed forces. Wrecking of trains should be limited strictly to cases which tend directly to weaken the enemy's military forces.

U. S. Manual, p. 59.

Projectiles from aircraft.

It is permissible to throw projectiles down from a balloon or an aeroplane provided the obligations embodied in article 57 (Nos. 1, 2, and 8) and article 63 are respected.

Jacomet, p. 60.

ABUSE OF FLAGS, INSIGNIA, UNIFORMS, AND BADGES.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

* * * * * * *

(f) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention.—*Article 23, Regulations, Hague Convention. IV, 1907.*

The treacherous use of a white flag as indicating a readiness to surrender is, of course, within this prohibition.

By "national flag" is, of course, meant the flag of the enemy. Cf. Art. 62, *supra* (i. e. G. 21).

Troops may sometimes be obliged by lack of clothing, and with no fraudulent intent, to make use of uniforms belonging to the enemy. Care must be taken in such cases to make alterations in the uniform which will clearly indicate the side to which those who wear it belong.

Holland, p. 45.

A curious arbitrary rule affects one class of stratagems by forbidding certain permitted means of deception from the moment at which they cease to deceive. It is perfectly legitimate to use the distinctive emblems of an enemy in order to escape from him or to draw his forces into action; but it is held that soldiers clothed in the uniforms of their enemy must put on a conspicuous mark by which they can be recognized before attacking, and that a vessel using the enemy's flag must hoist its own flag before firing with shot or shell. The rule, disobedience to which is considered to entail grave dishonor, has been based on the statement that 'in actual battle, enemies are bound to combat loyally and are not free to ensure victory by putting on a mask of friendship.' In war upon land victory might be so ensured, and the rule is consequently sensible; but at sea, and the prohibition is spoken of generally with reference to maritime war, the mask of friendship no longer misleads when once fighting begins, and it is not easy to see why it is more disloyal to wear a disguise when it is obviously useless, than when it serves its purpose.

Hall, pp. 558, 559.

The *American Instructions* show quite clearly that war usage, as understood by the author, condemns the use of the enemy's distinctive uniform, even before a battle, for paragraph 64 instructs troops who find it necessary to use uniforms captured from the enemy to adopt "some striking mark or sign to distinguish the American soldier from the enemy." And a similar provision is to be found in the British official manual (*Laws and Customs of War*, pp. 31–32). The *American Instructions* stigmatise as perfidy "the use of the enemy's national

standard, flag, or other emblem of nationality for the purpose of deceiving the enemy in battle." The Hague *Règlement* has really left the matter undecided, for it refers to the *improper* use of the national flag, insignia, or uniform of the enemy. I think the Anglo-Boer War furnishes an excellent precedent for guidance in this matter, with which I shall deal after a hasty review of the practice in some prior wars. It is most probable that, under present practice, the assumption of an enemy's uniform or flag, even before a battle, would be regarded as a violation of the laws of war, unless the circumstances showed that there was no intent to deceive.

Spaight, p. 105.

Article 23 (*f*) of the Hague Regulations does not prohibit any and every use of these symbols, but only their *improper* use, thus leaving the question open, what uses are proper and what are not. Those who have hitherto taught the admissibility of the use of these symbols outside actual fighting can correctly maintain that the quoted article 23 (*f*) does not prohibit it.

Oppenheim, p. 202.

The use of the enemy uniform for the purpose of deceit is different from the case when members of armed forces who are deficient in clothes wear the uniforms of prisoners or of the enemy dead. If this is done—and it always will be done if necessary—such distinct alterations in the uniform ought to be made as will make it apparent to which side the soldiers concerned belong (see *Land Warfare*, §154). Different again is the case where soldiers are, through lack of clothing, obliged to wear the apparel of civilians, such as great coats, hats, and the like. Care must then be taken that the soldiers concerned do nevertheless wear a fixed distinctive emblem which marks them as soldiers, since otherwise they lose the privileges of members of the armed forces of the belligerents (see article 1, No. 2, of the Hague Regulations). During the Russo-Japanese War both belligerents repeatedly accused each other of using Chinese clothing for members of their armed forces; the soldiers concerned apparently were obliged through lack of proper clothing temporarily to make use of Chinese garments. See, however, Takahashi, pp. 174–178.

Oppenheim, vol. 2, p. 202, note 3.

What constitutes "improper use."

Questions connected with uniforms and flags rest almost entirely on usage, and are, therefore, sometimes doubtful, since practice is by no means consistent, and great authorities differ on important points. The only reference to them in law-making international documents is contained in the twenty-third Article of the Hague Règlement, which in its list of things forbidden to belligerents includes "improper use of * * * the national flag, or of the military insignia and uniform of the enemy." No attempt was made to define improper use, and we are therefore thrown back on custom and its interpreters. All are agreed that troops engaged in actual conflict must not wear the uniform or carry the ensigns of the enemy. But may they do these things in order to secure an unmolested

advance to the attack, if they don a distinguishing badge at the moment when the conflict begins? There is a school of writers who see no harm in such conduct. But another and on the whole more modern school denounce it, and with good reason. A national uniform is a well-known sign that is supposed to mean one and the same thing always and at all times. Its use was adopted in order that belligerents might know friends from foes; and so important was knowledge of this fundamental distinction deemed that when states discussed the conditions on which they would consent to legalize irregular combatants they placed among them the wearing of a distinctive badge recognizable at a distance. These precautions would be nullified, if troops were to creep up to the enemy's lines, and even into his encampments, in the guise of friends. In the American civil war when the ill-clad Southerners, as sometimes happened, clothed themselves in military greatcoats and uniforms from captured Northern depôts or convoys, they were expected to place some distinguishing mark in a conspicuous position. In the South African War owing to the absence of uniforms on the part of the Boers at the beginning, and the absence of clothing at the end except what they took from the British, the rule was practically waived; but the circumstances were so extraordinary that they can hardly constitute a precedent.

Lawrence, pp. 552, 553.

What constitutes "improper use."

* * * even using the enemy's national flag, military ensigns and uniform, being in substance spreading a false report by acts instead of words, is allowed up to the last moment before fighting, when the true colours must be resumed. An attack or any employment of force can only be made under the external symbols of the proper nationality, or war would lose the characters on which such humanity as is possible in it depends; and the "improper use" of the enemy's symbols which is mentioned in H XXIII (f) must be understood in the sense of this established usage, and not more widely.

Westlake, vol. 2, p. 80.

In the course of military operations, the following things are prohibited:

* * * * * * *

(*c*) to make an unlawful use of a flag of truce or of the national flag, of military signals, or of the enemy's uniform;

(*d*) to show, in order to deceive the enemy, the flag or badge of the Red Cross.

Art. 11, Russian Instructions, 1904.

Flags of truce.—Flags of truce must not be used surreptitiously to obtain military information or merely to obtain time to effect a retreat or secure reenforcements or to feign a surrender in order to surprise an enemy. An officer receiving them is not on this account absolved from the duty of exercising proper precautions with regard to them.

U. S. Manual, p. 61.

National flags, insignia, and uniforms as a ruse.—In practice it has been authorized to make use of these as a ruse. The foregoing rule does not prohibit such use, but does prohibit their *improper use.* It is certainly forbidden to make use of them during a combat. Before opening fire upon the enemy they must be discarded. Whether the enemy flag can be displayed and his uniform worn to effect an advance or to withdraw is not settled.

U. S. Manual, p. 61.

Practice as to enemy uniforms in this country.—In this country it has always been authorized to utilize uniforms captured from the enemy, provided some striking mark or sign is attached to distinguish the American soldier from the enemy. All distinctive badges or marks of the enemy should be removed before making use of them. It is believed that such uniforms should not be used except in case of absolute necessity.

U. S. Manual, p. 62.

Improper use of distinctive badges of Geneva Convention.—The Red Cross flag must be limited to the protection of units and material provided for in the Geneva Convention. As examples of the improper use may be cited covering wagons containing ammunition or non-medical stores, a hospital train used to facilitate the escape of combatants, firing from a tent or building flying the Red Cross flag, using a hospital or other building accorded such protection as an observatory or military office or store, or generally for committing acts of hostility.

U. S. Manual, p. 62.

Abuse of flag of truce.—It constitutes an abuse of the flag of truce, forbidden as an improper use under Hague Rule XXIII (f), for an enemy not to halt and cease firing while the parlementaire sent by him is advancing and being received by the other party. Likewise, if the flag of truce is made use of for the purpose of inducing the enemy to believe that a parlementaire is going to be sent when no such intention exists. It is also an abuse of a flag of truce to carry out operations under the protection granted by the enemy to the pretended flag of truce. An abuse of a flag of truce may authorize a resort to reprisals.

U. S. Manual, p. 75.

The improper use of the distinctive signs of the Geneva Convention is forbidden. The Red Cross flag must not be used to cover wagons employed for the transport of ammunition and non-medical stores. A hospital train must not be used to facilitate the escape of combatants. A gun or rifle must not be used from a tent flying a Red Cross flag, nor must a hospital or any other building, for which protection is demanded by flying the Red Cross flag or other symbol, be used as an observatory or military office or store. It would not be legitimate to take advantage of the respect due to the wounded and dead to feign disablement or death in order to await a convenient opportunity for destroying an obstacle or screen.

The improper use of a flag of truce and of signals of surrender is forbidden. The flag must not be used merely to obtain time to effect retreat or obtain reinforcements. A surrender must not be

feigned in order to take the enemy at a disadvantage when he advances to secure his prisoners. The fact that such acts are forbidden does not, however, absolve an officer from the necessity of taking proper precautions against them.

Edmonds and Oppenheim, arts. 149, 150.

The employment of a national flag, military insignia, and uniform of the enemy for the purpose of ruse is not forbidden, but the Hague Rules prohibit their *improper* use, leaving unsettled what use is a proper one and what is not. Theory and practice are unanimous in forbidding their employment during a combat, that is, the opening of fire whilst in the guise of the enemy. There is, however, no unanimity with regard to the question whether the uniform of the enemy may be worn and his flag displayed for the purpose of effecting approach or retirement.

Edmonds and Oppenheim, art. 152.

The improper use of the flag of truce is particularly forbidden. It constitutes an abuse of the flag of truce if the force which sends a parlementaire does not halt and cease fire whilst the parlementaire is approaching and is being received by the other party.

It further constitutes an abuse of the flag of truce if a white flag is made use of for the purpose of making the enemy believe that a parlementaire is about to be sent, when there is no such intention, and of carrying out operations under the protection granted by the enemy to the pretended flag of truce.

Every abuse of the flag of truce entitles the injured party to reprisals.

Edmonds and Oppenheim, arts. 253–255.

The act of using the uniform of the enemy, even merely for the purpose of approaching him more easily, constitutes perfidy and renders those who commit it and who fall into the enemy's hands liable to the supreme penalty.

Jacomet, p. 60.

DESTRUCTION OR SEIZURE OF PROPERTY.

In addition to the prohibitions provided by special conventions, it is especially forbidden—

* * * * * * *

(g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war.—*Article 23, Regulations, Hague Convention IV, 1907.*

Article 23 forbids, under letter g, any destruction or seizure of the enemy's property not demanded by the necessities of war. The drafting committee had proposed to omit this clause as it seemed to it useless in view of the provisions farther on prescribing respect for private property; but the subcommission retained it, on the second reading, at the instance of Mr. Beernaert, for the reason that the chapter under consideration deals with limiting the effects of *hostilities*, properly so called, while the other provisions referred to treat more particularly of *occupation* of hostile territory.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 145.

Neither the debts due from the individuals of the one nation to the individuals of the other, nor shares, nor money, which they may have in public funds nor in public or private banks, shall ever in any event of war or national difference, be sequestrated or confiscated.

Treaty of Peace, Amity, Navigation, and Commerce between the United States and Colombia (New Granada), concluded, December 12, 1846, Article XXVIII.

In the same case [of interruption of friendly intercourse or any rupture between the contracting parties], debts between individuals, property in public funds, and shares of companies, shall never be confiscated, sequestered nor detained.

Treaty of Friendship, Commerce, and Navigation between the United States and Costa Rica, concluded July 10, 1851, Article XI.

Neither the debts due from the individuals of one nation to the individuals of the other, nor shares, nor moneys which they may have in the public funds, nor in public or private banks, shall ever, in any event of war or of national difference, be sequestered or confiscated.

Treaty of Peace, Friendship, Commerce and Navigation concluded between the United States and Bolivia, May 13, 1858, Article XXIX.

In the same case [of interruption of friendly intercourse or rupture between the contracting parties], debts between individuals, property in public funds, and shares of companies, shall never be confiscated, sequestered, nor detained.

Treaty of Friendship, Commerce, and Navigation between the United States and Honduras, concluded July 4, 1864, Article XI.

The high contrating parties agree that, in the unfortunate event of a war between them, the private property of their respective citizens and subjects, with the exception of contraband of war, shall be exempt from capture or seizure, on the high seas or elsewhere, by the armed vessels or by the military forces of either party; it being understood that this exemption shall not extend to vessels and their cargoes which may attempt to enter a port blockaded by the naval forces of either party.

Treaty of Commerce and Navigation between the United States and Italy, concluded February 26, 1871, Article XII.

It is forbidden:

* * * * * * *

b. To destroy public or private property, if this destruction is not demanded by an imperative necessity of war;

Institute, 1880, p. 33.

"Every species of reprisal or annoyance which a power at war employs, contrary to liberality or justice, of doubtful propriety in the estimation of the law of nations, departing from that moderation which, in later times, serves to mitigate the severities of war, by furnishing a pretext or provocation to the other side to resort to extremities, serves to embitter the spirit of hostilities, and to extend its ravages. War is then apt to become more sanguinary, more wasting, and every way more destructive. This is a ground of serious reflection to every nation, both as it regards humanity and policy; to this country it presents itself, accompanied with considerations of peculiar force. A vastly extended seacoast, overspread with defenseless towns, would offer an abundant prey to an incensed and malignant enemy, having the power to command the sea. The usages of modern war forbid hostilities of this kind; and though they are not always respected, yet, as they are never violated, unless by way of retaliation for a violation of them on the other side, without exciting the reprobation of the impartial part of mankind, sullying the glory and blasting the reputation of the party which disregards them, this consideration has, in general, force sufficient to induce an observance of them."

Letters of Camillus, No. 21, 5 Lodge's Hamilton, 104, quoted in Moore's Digest, vol. 7, pp. 199, 200.

The general rule by which we should regulate our conduct toward an enemy, is that of moderation, and on no occasion should we unnecessarily destroy his property

Halleck, p. 466.

The British Government, immediately after being advised of the conflagration, publicly thanked the officers concerned in it; and on being subsequently informed of the death of General Ross, who was killed, the day after the conflagration, in the abortive march to Baltimore, erected a monument in Westminster Abbey to his memory. But before long it was discovered that the burning of Washington was as impolitic as it was in violation of the law of nations.

Wharton, Int. Law Digest III. 335.

The exceptions to these general mitigations of the extreme rights of war, considered as a contest of force, all grow out of the same original principle of natural law, which authorizes us to use against an enemy such a degree of violence, and such only, as may be necessary to secure the object of hostilities. The same general rule, which determines how far it is lawful to destroy the persons of enemies, will serve as a guide in judging how far it is lawful to ravage or lay waste their country. If this be necessary, in order to accomplish the just ends of war, it may be lawfully done, but not otherwise. Thus, if the progress of an enemy cannot be stopped, nor our own frontier secured, or if the approaches to a town intended to be attacked cannot be made without laying waste the intermediate territory, the extreme case may justify a resort to measures not warranted by the ordinary purposes of war. If modern usage has sanctioned any other exceptions, they will be found in the right of reprisals, or vindictive retaliation.

Dana's Wheaton, pp. 433-437.

The old strict theory in regard to a state of war was that each and every subject of the one belligerent is at war with each and every subject of the other. Now as it was also a received rule that the persons and goods of my enemy belong to me if I can seize them, there was no end to the amount of suffering which might be inflicted on the innocent inhabitants of a country within the regular operations of war. It is needless to say that no Christian state acts on such a theory, nor did the Greeks and Romans generally carry it out in practice in its extreme rigor. In particular there is now a wide line drawn between combatants and non-combatants, the latter of whom, by modern practice, are on land exempted from the injuries and molestations of war, as far as is consistent with the use of such a method of obtaining justice.

Woolsey, p. 193.

Private property may be taken by a military commander for public use, in cases of necessity, or to prevent it from falling into the hands of the enemy, but the necessity must be urgent, such as will admit of no delay, or the danger must be immediate and impending. But in such cases the government is bound to make full compensation to the owner.

Moore's Digest, vol. 7, p. 287.

When the British forces in 1814 destroyed the Capitol, the President's house, and other public edifices at Washington, the justification of the act was rested by the British admiral on the ground of retaliation for the wanton destruction committed by the troops of the United States in Upper Canada. The correspondence between Mr. Secretary Monroe and Admiral Cochrane on this subject, is interesting and instructive, for it shows that both parties considered such acts of devastation as *abnormal*, and as involving a departure from the ordinary practice of civilized warfare.

Twiss, Law of Nations, War (2d ed.), sec. 69, pp. 133, 134.

Devastation is capable of being regarded independently as one of the permitted kinds of violence used in order to bring an enemy to terms, or as incidental to certain military operations, and per-

missible only for the purpose of carrying them out. Formerly it presented itself in the first of these aspects. Grotius held that 'devastation is to be tolerated which reduces an enemy in a short time to beg for peace,' and in the practice of his time it was constantly used independently of any immediate military advantage accruing from it. But during the seventeenth century opinion seems to have struggled, not altogether in vain, to prevent its being so used in more than a certain degree; and though the devastation of Belgium in 1683 and of Piedmont in 1693 do not appear to have excited general reprobation, Louis XIV was driven to justify the more savage destruction of the Palatinate by alleging its necessity as a defensive measure for the protection of his frontiers. In the eighteenth century the alliance of devastation with strategical objects became more close. It was either employed to deny the use of a tract of country to the enemy by rendering subsistence difficult, as when the Duke of Marlborough wasted the neighborhood of Munich in 1704, and the Prussians devastated part of Bohemia in 1757; or it was an essential part of a military operation, as when the Duc de Vendôme cut the dykes and laid the country under water from the neighborhood of Ostend to Ghent, while endeavoring to sever the communications with the former place of the English engaged in the siege of Lille. At the same time devastation was still theoretically regarded as an independent means of attack. Wolff declares it to be lawful both as a punishment and as lessening the strength of an enemy; Vattel not only allows a country to be 'rendered uninhabitable, that it may serve as a barrier against forces which can not otherwise be arrested,' but treats devastation as a proper mode of chastising a barbarous people; and Moser in like manner permits it both in order to 'deprive an enemy of subsistence which a territory affords to him,' and 'to constrain him to make peace.' But every few years an advance in opinion is apparent. De Martens restricts further the occasions upon which recourse can be had to devastation. Property he says may be destroyed which can not be spared without prejudicing military operations, and a country may be ravaged in extraordinary cases either to deprive an enemy of subsistence or to compel him to issue from his positions in order to protect his territory. Even at the beginning of this century instances of devastation of a not necessary kind occasionally present themselves. In 1801 the enlargement of Lake Mareotis by the English during the siege of Alexandria was no doubt justified by the bare law as it was then understood; but the measure, though of great advantage to the besiegers, was not the sole condition of success. The destruction of the towns of Newark and York by the American troops during their retreat from Canada in 1813 and of the public buildings of Washington by the English in 1814 may be classed together as wholly unnecessary and discreditable. The latter case was warmly animadverted upon by Sir J. Mackintosh in the House of Commons; and since that time not only have no instances occurred, save by indulgence in an exceptional practice to be mentioned presently, but opinion has decisively laid down that, except to the extent of that practice, the measure of permissible devastation is to be found in the strict necessities of war.

Hall, pp. 553–555.

Finally, all devastation is permissible when really necessary for the preservation of the force committing it from destruction or surrender; it would even be impossible to deny to an invader the right to cut the dykes of Holland to save himself from such a fate; but, when, as in the case supposed, the devastation is extensive in scale and lasting in effect, modern opinion would demand that the necessity should be extreme and patent.

Hall, p. 555.

The "necessities of war" may obviously justify not only the seizure of private property, but even the destruction of such property, and the devastation of whole districts. See *supra*, Art. 3.

Holland, p. 43.

Devastation pure and simple, as an end in itself, as a self-contained measure of war, is not sanctioned by war law. Permissible devastation presents itself invariably as a means to a military end, as a factor in a legitimate operation of war.

Spaight, p. 112.

As to fixed or movable property, not being the war *matériel*, stores or supplies of the enemy's army, which may be destroyed or appropriated in all circumstances, it is clear that the situation of such property within the zone of immediate hostilities may justify its destruction for the purpose of attack or defence. No commander will hestitate to level houses, vineyards, fences, anything, for a sufficient military reason, to give his men a clear field of fire, or to prevent the enemy using them as cover or as a mark by which to range his fire. To be squeamish about the rights of property in such a matter is to court disaster. Sir Henry Lawrence was strongly urged by his advisers to demolish the mosques surrounding the Residency at Lucknow; he refrained—"Spare the holy places," he said—and the very heaviest losses which the British garrison suffered during the siege were caused by the fire from the buildings he had spared. "Institutions devoted to religion" are assimilated to private property by Article LVI of the Règlement, and a commander has an undoubted war right to destroy such buildings if it is necessary for the defence of his command. To spare them may be high chivalry, but it is not war. And the same principles apply to the case of civil hospitals; it is no breach of war law for a commander to garrison or destroy any such buildings if imperious military necessity demands, but he should in such a case provide for the patients elsewhere. One is surprised to find an astute Boer commandant erring in somewhat the same way as Lawrence in the Mutiny. When General Buller attacked Bergendal Farm (near Belfast, Transvaal) on 27th August, 1900, the British artillerists were able to range their fire with destructive accuracy because the Boer commandant had omitted, for some sentimental reason, to cut down the trees on the farm. In 1904, when the Japanese advance was threatening Liaoyang, the Russians wished to cut down the tall millet grass (kaoliang) around the town, in order to have a clear field of fire for 800 yards. The local Chinese demanded an exorbitant price as compensation for the crop, and the Russians haggled over this question, instead of doing at once what they were forced to do eventually, namely, take the matter into their own hands

and cut the crop themselves. The result was that all kaoliang was not cut when the Japanese arrived and what was left standing gave them an invaluable cover in their attack. The French burnt the fine forests round Paris in 1870 as a measure of defence, and one cannot conceive that they would have been more careful of hostile property than of their own. With such an act of national sacrifice as this war law has no concern, except to use it to show how unreasonable it would be to expect a belligerent to allow military considerations to be outweighed by respect for the private property and still less the public property of the hostile nation. At the Alma, the Russian commander, Prince Mentschikoff, set fire to a village which lay in the path of the British 2nd Division, and by doing so blotted out the ground they were to operate on; "it was," says Kinglake, "the most sagacious of all the steps he took that day," for he had not enough troops to defend his line. Had the village been a British one, the destruction would have been equally justified. In 1870, the Germans burnt the villages of Peltre, Basse Bevoye, La Maxe, and Magny near Metz to prevent their being used as shelter by the French in their sorties, as they were in the sorties of 22nd and 23rd September. The action was the more irreproachable because the French had themselves made a *zone militaire*, from which everything was cleared away, round the fortress, and the Germans could hardly be expected to show a more sensitive regard for the rights of French property-owners than the French generals. A commander's first duty is to secure the success of his side by every means not forbidden by war law, and war law forbids only such destruction as is not warranted by imperative military necessity. The requirements of attack or defence may render the presence of property, no matter what its nature is, a "nuisance" (in the legal sense), and if one has a right to "abate a nuisance" by self-help in peace-time, one has a thousandfold stronger right to do so in war, when life or death may hang on the sparing or destruction of a tree, a crop, a house, a village, or even a church. The *American Instructions* lay down (paragraph 18) that "military necessity * * * allows of all destruction of property," provided it be "indispensable for securing the ends of war" (paragraph 14). The British Manual is equally explicit:

> The "necessities of war" may obviously justify not only the seizure of private property but even the destruction of such property and the devastation of whole districts.

The following "double rule" is laid down in the German *Kriegsbrauch im Landkriege* (p. 54):

> No damage must be done—not even the most trivial—which is not necessitated by military reasons. Every damage—the very greatest—is justifiable, if war demands it or if it is a consequence of the proper carrying on of war.
>
> Spaight, pp. 114–117.

The general rule which I have stated, that devastation must be part and parcel of some military design to overcome the hostile army, furnishes the criterion of the right or wrong of any given destruction or seizure. But, as in the case of most general rules, the application of it gives rise to doubts and difficulties in practice. The question at once presents itself—How close must the connection be between the act of devastation and the operation of war to which it is ancillary? And this question is closely followed by another,

not less difficult—What constitutes an imperative necessity of war? There is no conception in International Law more elusive, protean, wholly unsatisfactory, than that of war necessity. One can only determine its nature and scope by examining actual events of war; theory is of little help.

Spaight, p. 113.

"If property be such that it ministers directly to the strength of the enemy and its possession *alone* enables him to supply himself with the munitions of war and to continue the struggle, then it may be confiscated." The case of the cotton in the Civil War was practically *sui generis* and is hardly likely to arise in any future war. State property which cannot be turned to warlike uses is not confiscable.

Spaight, p. 199; Boyd's Wheaton, sec. 346b.

In former times invading armies frequently used to fire and destroy all enemy property they could not make use of or carry away. Afterwards, when the practice of warfare grew milder, belligerents in strict law retained the right to destroy enemy property according to discretion, although they did not, as a rule, any longer make use of such right. Nowadays, however, this right is obsolete. For in the nineteenth century it became a universally recognised rule of International Law that all useless and wanton destruction of enemy property, be it public or private, is absolutely prohibited. And this rule has now been expressly enacted by article 23 (g) of the Hague Regulations, where it is categorically enacted that "to destroy * * * enemy's property, unless such destruction * * * be imperatively demanded by the necessities of war, is prohibited."

All destruction of and damage to enemy property for the purpose of offence and defence is *necessary* destruction and damage, and therefore lawful. It is not only permissible to destroy and damage all kinds of enemy property on the battlefield during battle, but also in preparation for battle or siege. To strengthen a defensive position a house may be destroyed or damaged. To cover the retreat of an army a village on the battlefield may be fired. The district around an enemy fortress held by a belligerent may be razed, and, therefore, all private and public buildings, all vegetation may be destroyed, and all bridges blown up within a certain area. If a farm, a village, or even a town is not to be abandoned but prepared for defence, it may be necessary to damage in many ways or entirely destroy private and public property. Further, if and where a bombardment is lawful, all destruction of property involved in it becomes likewise lawful. When a belligerent force obtains possession of an enemy factory for ammunition or provisions for the enemy troops, if it is not certain that they can hold it against an attack, they may at least destroy the plant, if not the buildings. Or if a force occupies an enemy fortress, they may raze the fortifications. Even a force intrenching themselves on a battlefield may be obliged to resort to the destruction of many kinds of property.

Destruction of enemy property in marching troops, conducting military transport, and in reconnoitering, is likewise lawful if unavoidable. A reconnoitering party need not keep on the road if they can better serve their purpose by riding across the tilled fields.

And troops may be marched and transport may be conducted over crops when necessary. A humane commander will not unnecessarily allow his troops and transport to march and ride over tilled fields and crops. But if the purpose of war necessitates it he is justified in so doing.

Whatever enemy property a belligerent may appropriate he may likewise destroy. To prevent the enemy from making use of them a retreating force may destroy arms, ammunition, provisions, and the like, which they have taken from the enemy or requisitioned and cannot carry away. But it must be specially observed that they may not destroy provisions in the possession of private enemy inhabitants in order to prevent the enemy from making use of them in the future.

Oppenheim, vol. 2, p. 187.

General devastation.

The question must also be taken into consideration whether and under what conditions general devastation of a locality, be it a town or a larger part of enemy territory, is permitted. There cannot be the slightest doubt that such devastation is as a rule absolutely prohibited and only in exceptional cases permitted when, to use the words of article 23 (g) of the Hague Regulations, it is "imperatively demanded by the necessities of war." It is, however, impossible to define once for all the circumstances which make a general devastation necessary, since everything depends upon the merits of the special case. But the fact that a general devastation can be lawful must be admitted. And it is, for instance, lawful in case of a levy *en masse* on already occupied territory, when self-preservation obliges a belligerent to resort to the most severe measures. It is also lawful when, after the defeat of his main forces and occupation of his territory, an enemy disperses his remaining forces into small bands which carry on guerilla tactics and receive food and information, so that there is no hope of ending the war except by a general devastation which cuts off supplies of every kind from the guerilla bands. But it must be specially observed that general devastation is only justified by imperative necessity and by the fact that there is no better and less severe way open to a belligerent.

Be that as it may, whenever a belligerent resorts to general devastation he ought, if possible, to make some provision for the unfortunate peaceful population of the devastated tract of territory. It would be more humane to take them away into captivity rather than let them perish on the spot. The practice, resorted to during the South African war, to house the victims of devastation in concentration camps, must be approved. The purpose of war may even oblige a belligerent to confine a population forcibly in concentration camps.

Oppenheim, vol. 2, pp. 190, 191.

It is not to be supposed that in ancient and mediaeval warfare property would be spared where life was freely taken. Accordingly we find unlimited plunder and destruction the rule not only in classical times, but also in periods far more nearly approaching our own. When the English under Edward III landed in Normandy in 1346, they spread themselves over the country, burning and plundering

up to the very gates of Paris. The French invasions of Italy at the end of the fifteenth and the beginning of the sixteenth centuries were undertaken without magazines or money. The troops lived on the country, which they ate up like locusts. The atrocities of the Thirty Years' War are too well known to need description. Even Grotius was obliged to admit that "by the Law of Nations * * * any one in a regular war may, without limit or measure, take and appropriate what belongs to the enemy." But when he endeavored to enforce *temperamenta belli*, he argued that even in a just war men should not capture more than was necessary for their own safety unless it was morally due to them either as a debt or by way of punishment. He added that the injured side, if it abounds in wealth, should not exact the utmost farthing, and spoke with approval of the custom of sparing the lands of cultivators and the goods of merchants, and only taking tribute from them. Rules based upon the notion that war is a punishment have not found their way into International Law; but the other idea of Grotius that the invader should measure his acquisitions by his necessities was fruitful of good. In the next great cycle of European wars Marlborough and Eugene and their French opponents kept strict discipline in their armies. Requisitions took the place of indiscriminate plunder, and the avocations of peaceful life went on amidst the movements of the contending forces. Yet now and again the old ferocity broke out, though on each occasion it shocked the conscience of Europe. For instance, in 1688 the Palatinate was devastated amid general execration by the order of Louis XIV and his minister, Louvois; and in 1704 Marlborough ordered a part of Bavaria to be laid waste, in order to punish the Elector for adhering to the French alliance and induce him to quit it.

Lawrence, pp. 431, 432; *De Jure Belli ac Pacis*, bk. III, ch. vi, 2 and ch. xiii.

The savage customs of ancient warfare allowed unlimited destruction in an enemy's territory. We have already seen how in comparatively recent times better practices were gradually introduced, till now an invader, instead of being free to destroy a country, finds himself charged with the duty of protecting property and industry within it. Grotius endeavored to restrict the old right of unlimited destruction by laying down that only "such ravage is tolerable as in a short time reduces the enemy to seek peace," and even this he endeavored to surround with all sorts of limitations. The publicists of the eighteenth century followed in his footsteps, and their successors have gone steadily forward in the same direction. Vattel, for instance, says that the utter destruction of a hostile territory is authorized and excused in two cases only. The first is when there exists a "necessity for chastising an unjust and barbarous nation, for checking its brutality and preserving ourselves from its depredations," and the second exists when there is evident need "for making a barrier for covering a frontier against an enemy who cannot be stopped in any other way." In discussing the question he practically adds as a third case the destruction that may be required in order to carry on field operations or the works of a siege. There can be no doubt about this last instance. The laws of war allow the suburbs of a town to be destroyed in order to keep the besiegers from effecting a lodgment in them, or afford free scope to the action of

defending artillery. Buildings may be demolished and trees cut down to strengthen a position, and even villages burnt to cover a retreat. But such devastation must be absolutely necessary for the attainment of some direct and immediate military end. It is not enough that there should be merely a vague expectation of future advantage to accrue from the act.

In warfare with barbarous or semi-barbarous races, the first exception allowed by Vattel is often acted on, especially when punitive expeditions are sent to chastise savages for outrages of which they have been guilty. When the punishment is made to fall on the real offenders, whether tribes or individuals, and the measures taken are unstained by brutality or license, these operations may prevent similar outrages in future, and thus conduce to the welfare of mankind. But the greatest care should be shown in conducting them. Considered as agents of avenging justice, shells often show a painful lack of discrimination. They are apt to destroy the innocent as well as the guilty.

Vattel's second exception is allowed no longer. A belligerent who devastated his enemy's territory in order to make a barrier and cover his own frontier, would now be held up to the execration of the civilized world. The ravaging of the Palatinate in 1689 was justified by the French Government on this ground; but, as Vattel himself says with regard to it, "All Europe resounded with invectives and reproaches." We have advanced a long way in the direction of humanity towards foes since that time and what was denounced then would not be tolerated now.

Lawrence, pp. 547, 548; *De Jure Belli ac Pacis*, bk. III, ch. xii; *Droit des Gens*, bk. III, secs. 167, 168.

What constitute "necessities of war."

When we turn to modern law-making documents we find that both the Brussels Conference and the two Hague Conferences laid down the only general rule possible for civilized states. Article twenty-three of the Hague Règlement declares that it is forbidden "to destroy * * * the enemy's property, unless such destruction * * * be imperatively demanded by the necessities of war." It may be taken for granted that the necessities of war include the destruction of whatever property interferes with the operations of a conflict, an advance, or a retreat. No general would, if he could help it, allow a bridge to stand which an enemy might cross to attack his positions, or a railway in his rear to remain intact to facilitate the onward march of his pursuers. Nor would he hesitate to blow up a factory, or even a church, that blocked the way for his artillery up a narrow valley. Again, a naval commander, charged with the duty of destroying a nest of pirates, would not scruple to shell them out of their strong-hold and then land a party to burn it. Moreover, the deliberate destruction, by fire or explosives, of buildings from which shots were fired on invading troops by non-combatants or unauthorized combatants, is an act which any officer who cared for the safety of his men would feel bound to order. None of these things would be accounted unlawful. But how far beyond them is it legitimate to go? The phrase "necessities of war" is vague and elastic, and the interpretation given to it in practice will depend largely on the personal character of those who direct the armies. It is clear

that the necessity must be fairly direct and immediate, else it would be possible to justify the most atrocious acts, such, for instance, as the slaughter of unarmed lads lest they should in future recruit the enemy's forces. The magazines and stores of an enemy may certainly be given to the flames; but may a force marching through a fertile belt of hostile country burn barns and standing crops, on the plea that the district is the granary of the enemy? This was the ground alleged in justification of much of the farm-burning by the British in the later stages of the Boer War, and of the devastation of the Shenandoah Valley by Sheridan and parts of Georgia and South Carolina by Sherman in the American Civil War. It hardly seems sufficient. If an invader can occupy a district, its resources are his to tax to the bone by way of requisition as long as he does not reduce the inhabitants to actual starvation. But if he cannot, it may well be doubted whether his war-right allows him to send columns through it, and mark their track by ruin and destruction. The case of a semi-guerilla war, like that of 1901 and 1902 in South Africa, carried on over vast tracts of sparsely settled country, presents special difficulties, for its military occupation in the usual sense is practically impossible. The British destroyed the farms over wide districts, removing the non-combatant inhabitants and caring for them in concentration camps. This device, so humane in conception and so costly of infant life in effect, gave rise to an enormous amount of heated controversy. It is much to be wished that civilized mankind could agree to define the emergencies on which it is lawful to devastate, instead of leaving the matter in its present indeterminate condition. The experience of the British in the South African War, when the Boer commanders supplied themselves from Kaffir kraals and captured convoys, shows that devastation may be as useless as it is unmerciful; and in such cases even the costly expedient of feeding the dispossessed inhabitants ought not to be held to justify the destruction of their dwellings and property.

Lawrence, pp. 549, 550.

Devastation for defense.

A broad distinction must be drawn between devastation by an enemy and devastation by a population to repel an enemy. If a nation is willing to consign to destruction its own homes and possessions in order to stop the advance of invaders or weaken them by cutting off sources of supply, International Law in no way forbids such a piece of heroic self-sacrifice. History has nothing but praise for the Dutch who in the war of independence cut their dykes, and let in the sea as a defence against the Spaniards. And similarly, the action of the inhabitants of Moscow, who left their city and allowed it to be given to the flames in order that it might not be used as winter quarters by Napoleon's army, has always been regarded as a splendid example of patriotic devotion.

Lawrence, pp. 550, 551.

H XXIII (*g*) refers to pillage as distinguished from requisitions, and to devastation not directly necessary for a military purpose.

Westlake, vol. 2, p. 83.

In the course of military operations, the following things are prohibited:

* * * * * * *

(e) to destroy or take possession of things belonging to the enemy with the exception of these cases: (1) mentioned in Art. 10; and (2) when military considerations demand it.

Art. 11, Russian Instructions, 1904.

General rule as to war right to seize and destroy property.—The rule is that in war a belligerent can destroy or seize all property of whatever nature, public or private, hostile or neutral, unless such property is specifically protected by some definite law of war, provided such destruction or seizure is imperatively demanded by the necessities of war.

U. S. Manual, p. 118.

Devastation.—The measure of permissible devastation is found in the strict necessities of war. As an end in itself, as a separate measure of war, devastation is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real estate may be utilized for marches, camp sites, construction of trenches, etc. Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnoissance, cover, defense, etc. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army.

U. S. Manual, p. 118.

Booty.—All captures and booty belong, according to the modern law of war, primarily to the Government of the captor.

Prize money whether on land or sea can now only be claimed under local law.

U. S. Manual, p. 119.

Private property must be respected; it may not be confiscated or pillaged, even if found in a town or place taken by assault.

Edmonds and Oppenheim, Art. 407.

General devastation of enemy territory is, as a rule, absolutely prohibited, and only permitted very exceptionally, when "it is imperatively demanded by the necessities of war." The question in what circumstances a necessity arises cannot be decided by any hard and fast rule.

Edmonds and Oppenheim, Art. 434.

Movable private property, finally, which in earlier times was the undeniable booty of the conqueror, is to-day regarded as inviolable. The carrying off of money, watches, rings, trinkets, or other objects of value, is therefore to be regarded as criminal robbery and to be punished accordingly.

German War Book, p. 170.

Special case of cotton in the United States' Civil War.

[Cotton was] "made use of by the Confederacy in carrying on the war, both by accumulating it in large quantities for sale, when it could be passed through the lines, and by destroying it when in danger of being seized by the United States troops; in this way aiding a cotton famine in foreign countries, so as to stimulate and secure recognition of the Confederacy as a separate member of the family of nations.

"Cotton was useful as collateral security for loans negotiated abroad by the Confederate States government, or, as in the present case, was sold by it for cash to meet current expenses, or to purchase arms and munitions of war. Its use for such purposes was publicly proclaimed by the Confederacy, and its sale interdicted except under regulations established by, or contract with, the Confederate government. Cotton was thus officially classed among war supplies, and, as such, was liable to be destroyed when found by the Federal troops or turned to any use which the exigencies of war might dictate.

"The military importance of cotton to the Confederacy is shown by the fact that as early as February, 1861, an act passed by the provisional government of the Confederate States 'to raise money for the support of the government and to provide for the defence of the Confederate States of America' levied a duty on all cotton in the raw state exported from the Confederate States; and in May of the same year an act was passed prohibiting the export of cotton from the Confederate States, except through the ports of said States.

"In the same year (1864) in which the claimants made their contract, the Confederate war department officially recognized cotton as being one of the chief munitions of war by advising that large amounts of Confederate bonds should be issued for the separate use of that department in purchasing cotton and steamers with which to obtain military supplies from abroad."

Mr. Bayard, Sec. of State, to Mr. de Muruaga, Spanish min., June 28, 1886, For. Rel. 1887, 1006, quoted in Moore's Digest, vol. 7, pp. 303, 304.

Confiscations in United States' Civil War.

"I have the honour to acknowledge the receipt of your letter of the 12th inst., in which you state that a friend in England makes inquiry 'whether confiscations were made after the civil war; and, if so, to what extent.'

"While the inquiry is limited to what was done after the close of the war, it may interest your correspondent to know what policy was pursued by the Government during the war.

"By the act of Congress approved March 12, 1863, the Secretary of the Treasury was authorized to appoint special agents to collect captured and abandoned property in the States in insurrection. The Southern Confederacy had agents in all the cotton States, buying cotton and paying for it in Confederate bonds or currency. The cotton so purchased by the Confederate agents comprised almost the only property 'captured' by the United States Treasury agents during the war. If a mistake was made by these Treasury agents in taking possession of property wrongfully, the Secretary of the Treasury, upon appeal, released the property; or, if it had been sold, the proceeds. Under the above act, the Treasury agents took

possession of abandoned plantations, but they were all returned to their owners, some during the war, others afterward, and no proceedings to confiscate this property were instituted. If such had been the policy and action of the Government, the real estate of such a distinguished Confederate as John Slidell, minister to France, whose property was in the possession of the Treasury agents during the war, would have been among the first to be confiscated. The liberal terms granted to General Lee, when he surrendered to General Grant, are part of the history of this country, and need not be repeated here.

"The rebellion had not been suppressed in all parts of the South when, on the 29th of May, 1865, the President of the United States issued a proclamation granting 'to all persons who have, directly or indirectly, participated in the existing rebellion, except as hereinafter excepted, amnesty and pardon, with restoration of all rights of property, except to slaves.' No 'political conditions were laid down.' There were excepted cases in the proclamation, but the parties were afterward pardoned, either by the President or by acts of Congress.

"It is true in some cases private property was taken and used by the Union armies, wi hout compensation at the time, but Congress, by the act of March 3, 1871, provided a commission to adjudicate these claims.

"You are aware that the act of March 3, 1863, which provided for the appointment of special agents to collect captured and abandoned property, provided also that 'any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims.'

"Thus, during the war and until August 20, 1868 (the rebellion was officially declared suppressed August 20, 1866) your honorable court had jurisdiction of all claims for captured and abandoned property. The records of your court will show that judgments were entered for large sums in favour of persons who had been active and prominent in the rebellion.

"A large amount of cotton was seized by the Treasury agents after the rebellion had collapsed but had not been entirely suppressed.

"The right to file claims in the Court of Claims having ceased August 20, 1868, Congress provided another remedy for those who claimed that cotton had been wrongfully seized, and passed the act of May 18, 1872, which provided that the Secretary of the Treasury should return the proceeds derived from the sale of cotton illegally seized after June 30, 1865. A large number of claims were filed under this act, but in nearly all cases it was found that the claimants had sold the cotton to the Confederacy, and it was, therefore, Confederate cotton when it was seized.

"In reply to the specific inquiry of your correspondent I will state that confiscation through the courts, as near as can be ascertained, amounted to less than $200,000.

"You state that my reply will not be made public without my consent. As the facts above stated are public history, you are at liberty to use this reply as you may deem proper."

Letter of Mr. Shaw, Sec. of Treasury, to Mr. Mott, Ch. J. of the Court of Claims, Feb. 18, 1902, quoted in Moore's Digest, vol. 7, pp. 298–300.

"Referring to the conversation which the Assistant Secretary, Mr. Day, had the honor to have with you on the 8th instant, it now becomes my duty, obeying the direction of the President, to invite through your representation the urgent attention of the Government of Spain to the manner of conducting operations in the neighboring Island of Cuba.

"By successive orders and proclamations of the captain-general of the Island of Cuba, some of which have been promulgated while others are known only by their effects, a policy of devastation and interference with the most elementary rights of human existence has been established in that territory tending to inflict suffering on innocent noncombatants, to destroy the value of legitimate investments, and to extinguish the natural resources of the country in the apparent hope of crippling the insurgents and restoring Spanish rule in the island.

"No incident has so deeply affected the sensibilities of the American people or so painfully impressed their Government as the proclamations of General Weyler, ordering the burning or unroofing of dwellings, the destruction of growing crops, the suspension of tillage, the devastation of fields, and the removal of the rural population from their homes to suffer privation and disease in the overcrowded and ill-supplied garrison towns. The latter aspect of this campaign of devastation has especially attracted the attention of this Government, inasmuch as several hundreds of American citizens among the thousands of concentrados of the central and eastern provinces of Cuba were ascertained to be destitute of the necessaries of life to a degree demanding immediate relief through the agencies of the United States, to save them from death by sheer starvation and from the ravages of pestilence.

"From all parts of the productive zones of the island, where the enterprise and capital of Americans have established mills and farms, worked in large part by citizens of the United States, comes the same story of interference with the operations of tillage and manufacture, due to the systematic enforcement of a policy aptly described in General Weyler's bando of May 27 last as 'the concentration of the inhabitants of the rural country and the destruction of resources in all places where the instructions given are not carried into effect.' Meanwhile the burden of contribution remains, arrears of taxation necessarily keep pace with the deprivation of the means of paying taxes, to say nothing of the destruction of the ordinary means of livelihood, and the relief held out by another bando of the same date is illusory, for the resumption of industrial pursuits in limited areas is made conditional upon the payment of all arrears of taxation and the maintenance of a protecting garrison. Such relief can not obviously reach the numerous class of concentrados, the women and children deported from their ruined homes and desolated farms to the garrison towns. For the larger industrial ventures, capital may find its remedy, sooner or later, at the bar of international justice, but for the labor dependent upon the slow rehabilitation of capital there appears to be intended only the doom of privation and distress.

"Against these phases of the conflict, against this deliberate infliction of suffering on innocent noncombatants, against such resort to instrumentalities condemned by the voice of humane civilization, against the cruel employment of fire and famine to accomplish by

uncertain indirection what the military arm seems powerless to directly accomplish, the President is constrained to protest, in the name of the American people and in the name of common humanity. The inclusion of a thousand or more of our own citizens among the victims of this policy, the wanton destruction of the legitimate investments of Americans to the amount of millions of dollars, and the stoppage of avenues of normal trade—all these give the President the right of specific remonstrance; but in the just fulfillment of his duty he can not limit himself to these formal grounds of complaint. He is bound by the higher obligations of his representative office to protest against the uncivilized and inhumane conduct of the campaign in the island of Cuba. He conceives that he has a right to demand that a war, conducted almost within sight of our shores and grievously affecting American citizens and their interests throughout the length and breadth of the land, shall at least be conducted according to the military codes of civilization.

"It is the President's hope that this earnest representation will be received in the same kindly spirit in which it is intended. The history of the recent thirteen years of warfare in Cuba, divided between two protracted periods of strife, has shown the desire of the United States that the contest be conducted and ended in ways alike honorable to both parties and promising a stable settlement. If the friendly attitude of this Government is to bear fruit it can only be when supplemented by Spain's own conduct of the war in a manner responsive to the precepts of ordinary humanity and calculated to invite as well the expectant forbearance of this Government as the confidence of the Cuban people in the beneficence of Spanish control."

Mr. Sherman, Sec. of State, to Mr. Dupuy de Lôme, Spanish Min., June 26, 1897, For. Rel., 1917, 507, quoted in Moore's Digest, pp. 212–214.

It appears that President Balmaceda, of Chile, February 13, 1891, issued an order to the intendente of Tarapacá, directing him, in case of losing possession of Iquique and of the line of the nitrate railway, completely to destroy all the nitrate factories in the province.

February 23, 1891, Mr. Kennedy, British minister at Santiago, though not then aware of the existence of this order, telegraphed to Lord Salisbury that the Chilean minister for foreign affairs had declared to him on two or three occasions that, in case the opposition fleet should succeed in taking possession of Iquique, the Government would order the destruction of all the machinery and working gear of the nitrate factories in the province of Tarapacá, in order to deprive the fleet of the revenues afforded by the export duties on nitrate. Most of the "officinas" belonged to British subjects.

February 26 Lord Salisbury telegraphed Mr. Kennedy to state that Chile would be "held responsible by Her Majesty's Government for any losses which may fall upon British subjects in consequence of wanton destruction or injury of private property."

This instruction was carried out by Mr. Kennedy in a note to Señor Godoy of March 4, 1891. In this note Mr. Kennedy, in conformity with his instructions, entered "a formal and emphatic protest" against any proposal to destroy British nitrate factories, and announced that his Government would hold Chile responsible "for losses to British subjects arising out of acts of unnecessary and wholesale destruction." In a subsequent interview with Señor

Godoy, Mr. Kennedy intimated that the destruction of British property in the northern provinces would cost Chile about 10,000,000£. Señor Godoy replied that Chile could and would pay it, and that, in the event of the capture of Iquique or of the commencement of serious hostilities, orders had been given for the destruction of all property which might afford resources to the opposition for the maintenance of the revolution.

Moore's Digest, vol. 7, pp. 203, 204, Blue Book, Chile, No. 1 (1892), 17, 18, 104–105, 261.

Special case of cotton in the United States' Civil War. Mrs. Alexander's Cotton, 2, Wall. 404, 419.

The Court said:

"Being enemies' property, the cotton was liable to capture and confiscation by the adverse party. (Prize Cases, 2 Black, 687.) It is true that this rule, as to property, on land, has received very important qualifications from usage, from the reasonings of enlightened publicists, and from judicial decisions. It may now be regarded as substantially restricted 'to special cases dictated by the necessary operation of war,' (1 Kent, 92), and as excluding, in general, 'the seizure of the private property of pacific persons for the sake of gain' (id. 93). The commanding general may determine in what special cases its more stringent application is required by military emergencies; while considerations of public policy and positive provisions of law, and the general spirit of legislation, must indicate the cases in which its application may be properly denied to the property of non-combatant enemies.

"In the case before us, the capture seems to have been justified by the peculiar character of the property and by legislation. It is well known that cotton has constituted the chief reliance of the rebels for means to purchase the munitions of war in Europe. It is matter of history, that rather than permit it to come into the possession of the national troops, the rebel government has everywhere devoted it, however owned, to destruction. The value of that destroyed at New Orleans, just before its capture, has been estimated at eighty millions of dollars. It is in the record before us, that on this very plantation of Mrs. Alexander, one year's crop was destroyed in apprehension of an advance of the Union forces. The rebels regard it as one of their main sinews of war; and no principle of equity or just policy required, when the national occupation was itself precarious, that it should be spared from capture and allowed to remain, in case of the withdrawal of the Union troops, an element of strength to the rebellion."

(See also Lamar *v.* Browne, 92 U. S. 187: Ford *v.* Surget, 97 U. S. 594, and Gilmer *v.* United States, 14 Ct. Cl. 184.)

The humane maxims of the modern law of nations, which exempt private property of noncombatant enemies from capture as booty of war, found expression in the abandoned and captured property act of March 12, 1863. "No titles were divested in the insurgent States unless in pursuance of a judgment rendered after due legal proceedings. The government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private property of noncombatant enemies from capture as booty of war."

Moore's Digest, vol. 7, p. 289, citing United States *v.* Klein, 13 Wall. 128, 137.

Mitchell v. Harmony, 13 How. 115.

In this case it was held that private property may be taken by a military commander for public use, in case of necessity, or to prevent it from falling into the hands of the enemy, but that the necessity must be urgent, such as will admit of no delay, or the danger must be immediate and impending, and that full compensation must be paid to the owner, in such cases of taking.

The only acts of Congress providing for the confiscation of property belonging to persons in rebellion were the act of August 6, 1861, which applied only to property acquired with intent to use or employ it, or to suffer it to be used or employed, in aiding or abetting the insurrection or in resisting the laws; and the act of July 17, 1862, 12 Stat. 589, which authorized seizure and confiscation only for future acts.

Moore's Digest, vol. 7, p. 290, citing Conrad *v.* Waples, 96 U. S. 279.

The fact that, prior to the passage of the act of 1862, a person was "engaged in the rebellion, as a member of the Confederate Congress, and giving constant aid and comfort to the insurrectionary government," did not affect his title to or power to dispose of his property. "Until some provision was made by law, the courts of the United States could not decree a confiscation of his property, and direct its sale. This follows from the doctrine declared in Brown *v.* The United States, reported in the 8th of Cranch."

Moore's Digest, vol. 7, p. 291, citing Conrad *v.* Waples, 96 U. S., 279, 284.

Contra. Young v. United States, 97 U. S. 39, 60.

The Court said:

"The Government of the United States, in passing the abandoned and captured property act, availed itself of its just rights as a belligerent, and at the same time recognized to the fullest extent its duties under the enlightened principles of modern warfare. The capture of cotton, and certain other products peculiar to the soil of the Confederacy, had become one of the actual necessities of the war. In no other way could the resources of the enemy be so effectually crippled. In fact, as was said in Lamar *v.* Browne [92 U. S. 187], 'It is not too much to say that the life of the Confederacy depended as much upon its cotton as it did upon its men.' 'It [cotton] was the foundation upon which the hopes of the rebellion were built.'

"Under such circumstances, it might have been destroyed, if necessary, as it often was by the insurgents; but as the destruction of property should always be avoided, if possible, Congress provided for its capture, preservation, and sale.

The funds of the Treasury derived from the property captured anterior to the abandoned or captured property act have never been treated as booty coming within the rule of international warfare by either the executive or legislative branches of the Government.

Moore's Digest, vol. 7, p. 289, citing Goodman *v.* United States, 14 Ct. Cl. 547.

The act of August 6, 1861, was passed by Congress in the exercise of its power "to make rules concerning captures on land and water," and was aimed exclusively at the seizure and confiscation of property used in aid of the insurrection. The act of July 17, 1862, proceeded upon the entirely different principle of confiscating property without regard to its use, by way of punishing the owner for being engaged in rebellion and not returning to his allegiance.

Moore's Digest, vol. 7, p. 291, citing Oakes *v.* United States, 174 U. S. 778, 790–791.

Dr. Wharton, in his Commentaries on American Law (sec. 216, pp. 307–309), collects the authorities and states the following as the result of his study and investigation:

"It has been held that the act of Congress declaring war against Great Britain did not work such confiscation. *The Juniata,* Newberry, 352. In *Brown v.* U. S. *ut sup.*, the right to confiscate debt was asserted; and *Ware v. Hylton,* 3 Dall. 199, was relied on as authority. But the better view is that the property of the inhabitants of an invaded country should not be taken by an invading army without remuneration. U. S. *v. Stevenson,* 3 Benedict, 119, Bluntschli, sec. 657. In the United States Articles of War, 1863, sec. 2, art. 37, it is said: 'The United States acknowledge and protect, in hostile countries occupied by them, religion and morality, strictly private property, the persons of the inhabitants, especially those of women, and the sacredness of the domestic relations. Offenses to the contrary shall be rigorously punished.' To the effect that private property can not be seized by an invading army, unless contraband, see Kent's Com. i. 93 *et seq.;* U. S. *v. Homeyer,* 2 Bond, 217; Transactions of the National Association for the Promotion of Social Science, 1860, pp. 163, 279; id., 1861, pp. 126, 748, 794; id., 1862, pp. 89, 896, 899; id., 1863, pp. 851, 878, 884; id., 1864, pp. 596, 656; id., 1868, pp. 168–187; Hautefeuille, Droits et Devoirs, i., 340–44; Martens, Essai sur les Armateurs, s. 45; and other authorities given in Field, *ut sup.* Heffter (Volkerrecht, s. 130, 132, 139, 140, 175, 192) holds that war gives only actual possession, but not the legal property in such captures.

"Dr. Woolsey (Int. Law, Par. 118, *note*) after noticing Hamilton's argument against confiscation (Hamilton's Works, vol. VII, 19th letter of 'Camillus') adds, speaking of the confiscation of the private property of the subject of the enemy, 'The foreigner brought his property here, it can at once be said, knowing the risk he might run in the event of a war. Why should he not incur the risk? He should incur it, say the older practice and the older authorities. He should not, says the modern practice, although international law in its rigor involves him in it. He should not, according to the true principle of justice, because his relation to the state at war is not the same with the relation of his sovereign or government; because, in short, he is not in the full sense an enemy. To this it may be added that when a foreigner invests property in a country with the permission of its government, there is an implied understanding that his title thereto will be respected unless divested by his personal act.

"As sustaining the right of seizure of private property in an enemy's country, see *The Venus,* 8 Cranch, 253; The *Ann Green,* 1 Gall. 274; *The Lilla,* 2 Sprague, 177; *The Freundschaft,* 3 Wheat. 15, 4 Wheat.

105. That this does not impress with belligerency a neutral on motion to leave *bona fide* belligerent territory, see *The Venus, ut supra; The St. Lawrence*, 1 Gall. 467. That neutrals and citizens are to be allowed a reasonable time, after breaking out of war, to withdraw from a belligerent country, see *The Sarah Starr*, Blatch. Pr. Ca. 650; *The General Pinckney*, ibid, 668.

"In *Mitchell v. Harmony* (13 Howard, 115), it was held that private property could only be taken by a military commander in case of necessity, for public use, to prevent it being used as contraband of war or falling into the enemy's hands. This, in the late civil war, was held to be the case with cotton, which, as one of the chief military supports of the Confederacy, was regarded as contraband. *Alexander's Cotton*, 2 Wall. 404. In this case, Chief Justice Chase, giving the opinion, declared that the right of capture 'may now be regarded as substantially restricted to 'special cases' (citing Chancellor Kent), 'dictated by the necessary operation of war;' and as excluding, in general, 'the seizure of the private property of pacific persons for the sake of gain.' In U. S. *v. Klein*, 13 Wall. 128, he says: 'No titles were divested in the insurgent States, unless in pursuance of a judgment rendered after due legal proceedings. The Government recognized, to the fullest extent, the humane maxims of the modern law of nations, which exempt property of non-combatant enemies from capture or booty of war.' To the same effect see *Lamar v. Brown*, 92 U. S. 194.

" 'In respect to real property the acquisition by the conqueror is not fully comsummated until confirmed by a treaty of peace, or by the entire submission of or destruction of the State to which it belonged.' Clifford, J., U. S. *v. Huckabee*, 16 Wall. 434."

For a very recent formulation of the right of confiscation of private property of enemies in war, see Magoon's Military Occupation, 264–281.

Scott's Cases, pp. 493–495, note.

JUDICIAL REMEDIES OF ENEMY NATIONALS.

In addition to the prohibitions provided by special Conventions, it is especially forbidden—

* * * * * * *

(*h*) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party;—*Article 23, Regulations, Hague Convention IV, 1907.*

Contra.

[In Great Britain] The right of the original creditor to sue for the recovery of the debt is not extinguished; it is only suspended during the war, and revives in full force on the restoration of peace.

Such, too, is the law and practice of the United States. The debts due by American citizens to British subjects before the war of the Revolution, and not actually confiscated, were judicially considered as revived, together with the right to sue for their recovery on the restoration of peace between the two countries.

Dana's Wheaton, p. 390.

This clause, suggested by Germany, if intended only for the guidance of an invading Commander, needs careful re-drafting; if, as would rather appear, it is of general application, besides being quite out of place where it stands, it is so revolutionary of the doctrine which denies to an enemy any *persona standi in iudicio*, that although it is included in the ratification of the Convention by the United States on March 10, and the signature of the same, on June 29, 1908, by Great Britain, it can hardly, till its policy has been seriously discussed, be treated as a rule of International Law.

Holland, p. 44.

This addition [paragraph h] to Article 23 of the Regulations of 1899 which contains a list of seven acts a belligerent is forbidden to perform was made on the proposition of the German delegate. The meaning to be attributed to this clause is open to doubt. At the meeting of the *Comité de rédaction* of the First Sub-Committee of the Second Committee on the 3rd July the President asked for further information with reference to the proposal. Herr Göppert, the German delegate, explained that the proposal was intended not to confine the inviolability of enemy property to corporeal property and that it had in view the whole domain of obligations by prohibiting all legislative measures which, in time of war, would place the subject of an enemy state in a position of being unable to prosecute the execution of a contract before the courts of the adverse party. On the 13th July, in the First Sub-Committee, General Yermolow (Russian) proposed to introduce an amendment to the German proposition allowing in certain cases during the war the seizure of debts or documents (*de saisir des créances ou des titres*) belonging to the

enemy which might assist in the continuance of the hostilities. This proposal was not accepted, and the text as it now stands was adopted. In the Report of Baron von Gieslingen to the Fourth Plenary Meeting of the Conference he states that "this addition [i. e., paragraph h] was considered to define in felicitous terms one of the consequences of the principles admitted in 1899. The introduction to the German *Weissbuch* states that by this paragraph "the principle of the inviolability in the department of justice is recognized. According to the legislation of some states the consequences of war are that the claims of states or their subjects against the nationals of the enemy are extinguished or suspended or inadmissible in a Court of Law. Such provisions are henceforth by Article 23 (*h*) declared to be invalid."

General Davis in discussing the meaning of this paragraph states that the purport of the whole Convention was to impose reasonable and wholesome restrictions upon the authority of commanding generals and their subordinates in the theatre of belligerent activity. "It is more than probable that this humane and commendable purpose would fail of accomplishment if a military commander conceived it to be within his authority to suspend or nullify their operation, or to regard their application in certain cases as a matter falling within his administrative discretion. Especially is this true where a military officer refuses to receive well grounded complaints, or declines to receive demands for redress, in respect to the acts or conduct of the troops under his command, from persons subject to the jurisdiction of the enemy who find themselves, for the time being, in the territory which he holds in military occupation. To provide against such a contingency it was deemed wise to add an appropriate declaratory clause to the prohibition of Article 23."

Professor Holland in commenting on this new prohibition remarks that "if this clause is intended only for the guidance of an invading commander it needs careful re-drafting: if, as would rather appear, it is of general application, besides being quite out of place where it stands, it is so revolutionary of the doctrine which denies to an enemy any *persona standi in judicio* that although it is included in the ratification of the Convention by the United States on March 10, 1908, and the signature of the same on June 29, 1908, by Great Britain, it can hardly, till its policy has been seriously discussed, be treated as rule of international law." In his introductory chapter to "The Laws of War on Land" Professor Holland cites this paragraph as an instance of the inconvenience of intermixing rules relating to the duties of belligerent Governments at home with those intended to serve for the guidance of armies in the field; he adds that the clause seems to require the signatory Powers to legislate for the abolition of an enemy's disability to sustain a *persona standi in judicio*.

In favor of the view propounded by General Davis it may be pointed out that the instruction is one addressed to commanders of armies in the field, and therefore such a prohibition has only reference to their proceedings in an enemy country. Article 32 of Dr. Lieber's "Instructions for the government of the armies of the United States" provides that "a victorious army, by the martial power inherent in the same, may suspend, change or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, sub-

ject or native of the same to another." The object of this provision was to enable the Federal Generals to set aside slavery in the Confederate territory occupied, and the Article of the "Instructions" attributed to them a power which was not theirs by the general rules of law. The paragraph under consideration would have the effect of negativing the view contained in the Article of the "Instructions" but it appears to do more than this. Dr. Lieber's Article refers to "relations * * * from one citizen, subject or native of the same to another"; Article 23 (*h*) of the present Convention refers to the "rights * * * of the adverse party."

If the view taken by the German *Weissbuch* be correct, and so far as I have been able to ascertain from the official records of the proceedings at the Conference it was the only view expressed during the discussions, Article 23 (*h*) constitutes a reversal of a rule of the English and American Common Law that contracts entered into by British subjects and subjects of the belligerent states, before the outbreak of war, become extinguished or suspended according to their nature; in England it has been stated by writers of great authority that statutes of limitation run during a war as against enemies, though the contrary has been decided in the United States. According to the strict wording of this paragraph some states may read it either with the restrictive meaning attached to it by General Davis, others with the more extended meaning given by the German *Weissbuch* if the latter view is taken by Great Britain legislation will probably be required to give it effect.

Higgins, pp. 263–265.

Contra, in practice of United States and Great Britain.

Formerly the rule prevailed everywhere that an enemy subject has no *persona standi in judicio* and is, therefore, *ipso facto* by the outbreak of war, prevented from either taking or defending proceedings in the Courts. This rule dates from the time when war was considered such a condition between belligerents as justified the committing of hostilities on the part of all subjects of the one belligerent against all subjects of the other, and, further, the killing of all enemy subjects irrespective of sex and age, and, at any rate, the confiscation of all private enemy property. War in those times used to put enemy subjects entirely *ex lege*, and it was only a logical consequence from this principle that enemy subjects could not sustain *persona standi in judicio*. Since the rule that enemy subjects are entirely *ex lege* has everywhere vanished, the rule that they may not take or defend proceedings in the Courts has in many countries, such as Austria-Hungary, Germany, Holland, and Italy, likewise vanished. But in Great Britain and the United States of America enemy subjects are still prevented from taking and defending legal proceedings, although there are six exceptions to the general rule. Firstly, enemy subjects who do not bear enemy character because they are resident in neutral country or have a licence to trade or are allowed to remain in the country of a belligerent, are therefore permitted to sue and be sued in British and American Courts. Secondly, if during time of peace a defendant obtains an opportunity to plead, and if subsequently war breaks out with the country of the plaintiff, the defendant may not plead that the plaintiff is prevented from suing. Thirdly, if a contract was entered into and

executed before the war, and if an absent enemy subject has property within the boundaries of a belligerent, he may be sued. Fourthly, a prisoner of war may sue during war on a contract for wages. Fifthly, if the parties, being desirous to obtain a decision on the merits of the case, waive the objection, enemy subjects may sue and be sued. Lastly, a petition on the part of a creditor who is an enemy subject, to prove a debt under a commission of bankruptcy must be admitted although the dividend will not be paid till after the conclusion of peace.

Oppenheim, vol. 2, pp. 133, 134.

Contra.

It is asserted that, in consequence of article 23 (*h*) of the Hague Regulations concerning land warfare enacting the injunction "to declare extinguished, suspended, or unenforceable in a Court of Law the rights and rights of action of the nationals of the adverse party," Great Britain and the United States are compelled to abolish their rule that enemy subjects may not sue. But the interpretation of article 23 (*h*) is controversial, Great Britain and the United States of America—in contradistinction to Germany and France—maintaining that the article has nothing to do with their Municipal Law but concerns the conduct of armies in occupied enemy territory.

Oppenheim, vol. 2, p. 134.

Contra.

It must be specially observed that, if the continental interpretation of article 23 (*h*) of the Hague Regulations—see above, sec. 100a—were not contradicted by Great Britain and the United States of America, both countries would be compelled to alter their Municipal Laws in so far as these declare such contracts as have been entered into with alien enemies before the outbreak of war dissolved, void, or suspended. Article 23 (*h*) distinctly enacts that it is forbidden to declare extinguished or suspended the rights of the nationals of the adverse party. Since, however, as stated above in sec. 100a, Great Britain and the United States of America uphold a different interpretation, this article does not concern their Municipal Laws respecting trading with alien enemies.

Oppenheim, vol. 2, p. 138.

Differing interpretation.

With regard to commercial intercourse there are two views. The older was set forth by Sir William Scott in the case of the *Hoop*. He declared it to be "an universal principle of law" that "all trading with the public enemy, unless with the permission of the sovereign, is interdicted." He then drew attention to the fact that English law applied with great vigor a principle that was to be found in the law of almost every country, that "the character of alien enemy carries with it a disability to sue or to sustain in the language of the civilians a *persona standi in judicio*." From this he obtained a further argument in favor of the proposition that commerce with enemy subjects is illegal; for "if the parties who are to contract have no right to compel the performance of the contract, nor even to appear in a court of justice for that purpose, can there be a stronger proof

that the law imposes a legal inability to contract?" This view was adopted and enforced by the courts of the United States, and seems to have been held pretty generally on the continent of Europe for a long time. According to Despagnet it was enforced by France as late as 1870; but by that time a newer and less severe doctrine had obtained a considerable hold on the opinion of jurists, especially in Germany. Briefly stated, it laid down that, since war no longer placed the general population of the opposing nations in a condition of active hostility, commercial intercourse should be allowed to go on between them except in so far as the necessities of national defence justified its suspension. This view achieved a notable triumph at the Hague Conference of 1907, when Germany succeeded in carrying an addition to the prohibitions of Article XXIII of the Regulations respecting the Laws and Customs of War on Land. It is cited as section (h), and runs as follows in the authoritative French version, "*De déclarer éteints, suspendus, ou non recevables en justice, les droits et actions des nationaux de la partie adverse.*" The translation adopted by the British Foreign Office in the Blue Book, issued in July, 1908, renders the section in English as "To declare abolished, suspended, or inadmissible the right of the subjects of the hostile party to institute legal proceedings." Other versions are given elsewhere; Professor Holland hazards the suggestion, which he does not adopt for himself, that the words may have been meant mérely for the guidance of an invading commander; and this view is taken by the British government and by General G. B. Davis, one of the American plenipotentiaries. There can be little doubt, however, that they were intended to have a different and far wider application. They were adopted by the full Conference practically without discussion. But at the meeting of an important sub-committee, held on July 3, 1907, the chairman asked for an explanation of them from M. Goppert, the able German jurist who was one of the representatives of his country on the body in question. In reply he was told that their object was to prohibit such laws on the part of a belligerent as would prevent an enemy subject from obtaining his ordinary remedies for breach of contractual obligation from the tribunals of the other side in time of war. That is to say, they reversed the old rule that denied to an enemy subject the right to appear in a court of his country's foe while the war was in progress. By so doing they rendered untenable the doctrine held by so many powers, including Great Britain and the United States, that the outbreak of war put a stop to all commercial intercourse with the enemy, except what is specially authorized by the supreme power in the state, and substituted for it the newer view that trade is allowed except in so far as it is expressly prohibited as dangerous to the public interests during the war. It may be doubted whether the Conference realized the magnitude of the change it made. Both of the two great English-speaking powers have signed and ratified the Convention concerning the Laws and Customs of War on Land, and accepted the Regulations which accompany it. But, if the view here taken is correct, it will be necessary for them to legislate in order to carry out the obligations they have assumed by assenting to the German proposition. A mass of legal technicalities and time-honored distinctions must be swept away. It is possible to believe that the new rule with all that is involved in it will be both simpler and better than the old,

and yet to regret that such a far-reaching change was made with so little discussion, and such an absence of clear and definite provision for the many exceptions rendered necessary in order to insure the safety of the state.

Lawrence, p. 357; The *Hoop*, 1 C. Rob. 191; Despargnet, *Droit International Public*, 2nd ed., p. 556; Holland, *Laws of War on Land*, p. 44; *American Journal of International Law*, vol. II, p. 70.

Contra.

But the rule that an alien enemy is under a disability to sue unless he is domiciled in the territory of the state would render difficult the collection of rents and profits. It might, however, be managed through an agent free from disability; and the difficulty is not likely to last much longer, if the Hague Regulation that forbids a belligerent "to declare extinguished, suspended, or unenforceable in a court of law the rights and rights of action of the nationals of the adverse party" is enforced by legislation in the states that still retain the doctrine that an enemy has no standing in their courts.

Lawrence, p. 425.

In states that retain the doctrine that an enemy has no *persona standi in judicio* he cannot sue for his debt during the war, but the right to do so revives at the conclusion of peace. In the United States a statute of limitations does not run during war against those who have no right of access to the courts; but British law seems to have adopted the contrary view.

Lawrence, p. 427.

Contra, by implication.

It sometimes happens, especially in maritime hostilities, that a belligerent grants licenses to trade, which enable their holders to carry on a commerce forbidden by the ordinary laws of war or by the legislation of the grantor. Licenses are *general* when a state gives permission to all its own subjects, or to all neutral or enemy subjects, to trade in particular articles or at particular places, *special* when permission is granted to particular individuals to trade in the manner described by the words of the documents they receive. Both kinds remove all disabilities imposed because of the war upon the trade in respect of which they are given. The holders can sue and be sued in the courts of the grantor, and are allowed to enter into contractual relations with his subjects to the extent necessary in order to act on the terms of the license.

Lawrence, p. 560.

The doctrine of non-intercourse, stated broadly, is that the right of action by enemy subjects on existing contracts is suspended, that commercial intercourse with enemy subjects is prohibited, and that as a consequence no new contracts can lawfully be made between the subjects of mutually enemy states except in the cases, such as that of ransom bills, known as *commercia belli*.

* * * * * * *

There are in fact two contrasted opinions. One is that the non-intercourse doctrine is now obsolete, that there is no general objection to contracting with enemy subjects, and that the remedies of

such subjects on their contracts are not suspended, except when and so far as a government may deem itself obliged by the circumstances of the war expressly to prohibit intercourse with them. This opinion of course leaves it open to the courts of law to pronounce a contract illegal which in their judgment amounts to a participation by a subject in a war against his country, as the Prussian criminal court in 1871 held the participation of the Berlin banker Güterbock in the French war loan known as the Morgan loan to be not only illegal but treasonable. And on the same principle a court may refuse to entertain an action on a contract made for the purposes of a war against the country, notwithstanding that such contract was legal when and where made.

* * * * * * *

The other opinion, which is that of the courts in England and the United States, is that the doctrine of non-intercourse as stated at the opening of this section continues in force, and that it is relaxations of it which require to be expressly made by governments.

Westlake, vol. 2, pp. 48–50.

Contra.

The doctrine that an enemy subject's right of action is suspended on those contracts made before the war which the war does not dissolve, but revives at the peace, may be seen in *Exp. Boussmaker*, 13 Ves. 71, Scott 494, where Lord Chancellor Erskine allowed the claim of an enemy creditor in a bankruptcy to be entered, in order that the fund might not be divided among the other creditors, but reserved the dividend.

Westlake, vol. 2, p. 51.

Contra.

The doctrine that when a contract made previous to the war with one who becomes an enemy subject requires to be further acted on, not merely the remedy on it is suspended but it is dissolved, because "it is unlawful to have communication or trade with an enemy," was laid down in the state of New York and applied to commercial partnerships by Chancellor Kent, in *Griswold v. Waddington*, 16 Johnson 438, Scott 504. It was applied by the Supreme Court of the United States, a minority dissenting, to policies of life insurance; and the insured was held entitled to sue after the peace for the equitable value of his policy, "as of the day when the first default occurred in the payment of the premium by which the policy became forfeited," with interest "from the close of the war"; New York Life Insurance Company *v.* Stathem, 93 U. S. 24, Scott 512. Its application to the relation of landlord and tenant was refused in the state of Massachusetts, and the landlord was allowed to sue after the close of the war for the unpaid rent: Kershaw *v.* Kelsey, 100 Mass. 561, Scott 535.

Westlake, vol. 2, p. 52.

This paragraph [first paragraph, Article 23 (*h*), Hague Convention IV, 1907] seems so out of place in a code of land war, and has on that account been so much discussed in England, that some space must be given to its consideration. It was introduced at the Hague in

1907, where at the first meeting of the first sub-committee of the second committee, on 3 July, it was read by Major-General von Gründell, military delegate of Germany, among the five propositions of his delegation, in this form: *de déclarer éteintes, suspendues, ou non recevables les réclamations privées des ressortissants de la partie adverse.* The *procès-verbal* of the same meeting further runs thus: *M. Göppert, délégué-adjoint d'Allemagne, explique que cette proposition* [1] *tend à ne pas restreindre aux biens corporels l'inviolabilité de la propriété ennemie, et qu'elle vise tout le domaine des obligations en vue de prohiber toutes les mesures législatives qui, en temps de guerre, mettraient le sujet d'un état ennemi dans l'impossibilité de poursuivre l'exécution d'un contrat devant les tribunaux de la partie adverse.* Thus the assembled powers were seized of the proposal to abolish the doctrine which denies to an enemy a *persona standi in judicio*, the power to appear in a court of law; and accordingly, at later meetings of the same sub-committee, the words *en justice* were inserted after *non recevables*, emphasizing the application of the new rule to regular courts and not merely to proceedings in connection with the occupation of enemy territory, if indeed any such proceedings can be suggested to which the rule would apply; a motion of the Russian delegate, General Zermolow, for allowing in certain cases the seizure of debts or documents belonging to the enemy which might assist in the continuance of the hostilities was not accepted; and the paragraph was reported to the second committee, which accepted it without discussion. On 17 August the report of that committee on its amendments to the Laws of War on Land was presented to the full conference, with the assurance that the essential parts of the work accomplished were not in the least modified, which was true in so far as the paragraph in question was not a modification but an addition. And the full conference, without availing itself of the opportunity of remark, sent the whole amended code to the drafting committee, of which Monsieur Renault was chairman, and he, not having time to draw up a written report, reported orally that "if they had occasionally modified the drafts sent to them, it was without affecting (*sans altérer*) the sense of the dispositions which they contained." In fact the final form of the paragraph differed from that which it had reached three months before only by the substitution of *les droits et actions* for *les réclamations privées*, and of *nationaux* for *ressortissants*, changes which, even if they were made at this stage, in no way affected the sense of the draft which M. Renault had received from the full conference.

In these circumstances it is not surprising that the paragraph has been unanimously understood as admitting enemies to a *persona standi in judicio* by the international lawyers of all countries except the two, Great Britain and the United States, which have hitherto been the most conservative on the question. Nor even in those two has there been much attempt to put any other construction on it. The United States General Davis, who was a U. S. A. delegate at the Hague in 1907, seems to regard the paragraph as aimed only at abuses of the "administrative discretion" of a commander, providing against

[1] Sir F. A. Campbell, in his letter from the Foreign Office mentioned below, admits that by "this proposition" M. Göppert "in all probability must have refered to this particular amendment, though the *procès-verbal* does not render it at all clear." But whatever may be the defect in expression of the *procès-verbal*, which however in substance is practically clear enough, there can have been no doubt in the minds of those present about what the speaker meant.

such a contingency as where he "refuses to receive well grounded complaints, or declines to receive demands for redress, in respect to the acts or conduct of the troops under his command, from persons subject to the jurisdiction of the enemy who find themselves for the time being in the territory which he holds in military occupation."[1] Professor Holland, while admitting as possible the case of the paragraph being "intended only for the guidance of an invading commander," says that "if, as would rather appear, it is of general application, besides being quite out of place where it stands, it is so revolutionary of the doctrine which denies to an enemy any *persona standi in judicio* that, although it is included in the ratification of the convention by the United States on 10 March, and the signature of the same on 29 June 1908, by Great Britain, it can hardly, till its policy has been seriously discussed, be treated as a rule of international law."[2] Dr. Higgins says, "the meaning to be attributed to this clause is open to doubt";[3] and Professor Oppenheim says that "the interpretation of article XXIII (h) is controversial."[4] But Sir F. A. Campbell, in a letter of 27 March 1911, written on behalf of Sir E. Grey, foreign secretary, goes so far as to say to Professor Oppenheim, who had laid before him the general foreign interpretation of Art. XXIII (h) and asked for the view of H. M.'s government on it—"it seems very strange that jurists of the standing of those from whose writings you quote could have attributed to the article in question the meaning and effect they have given it, if they had studied the general scheme of the instruments in which it finds a place."[5] To this rebuke M. Politis has replied that the articles 57–60 were placed in this very code at the Hague Conference of 1899 because no better place could be found for them, for want of time to add to the conventions of that conference, but were removed in 1907 to a convention to which they properly belonged; and that adding the German proposal in 1907 to H XXIII was a similar incident, which may have a similar conclusion at the third conference. In any case, he observes, *il est certain que la forme, si défectueuse soitelle, ne saurait compromettre le fond des dispositions.*[6]

My conclusions are these. It cannot be seriously questioned that the first paragraph of H XXIII (h) was adopted at the Hague, and has been signed as part of the relative convention, in the general understanding that it was directed against the whole denial to an enemy of a *persona standi in judicio*. It must therefore be so applied by the military commanders of the parties to the convention, if occasion should arise in land war for their so doing, which it is rather difficult to foresee. But there has not as yet been a vote or convention binding any country, in the judicial system of which an enemy has not the rights claimed for him in the paragraph, to confer them on him by legislation. When the question of such legislation may be mooted, Great Britain will be technically free to act as she may think best and most just, and her moral right to the same liberty will be best defended by a frank confession that, by an oversight, she did not in 1907 sufficiently appreciate the fact that a great juristic

[1] *Elements of International Law*, 3rd edn., 1908, p. 578, n. 1.
[2] *Laws of War on Land*, 1908, at the same time bracketing H XXIII (h) as "apocryphal."
[3] *The Hague Peace Conferences* p. 243.
[4] *International Law*, vol. 2, 2nd edn., p. 134.
[5] Ib.
[6] 18 *Revue Générale de Droit International Public*, 258, 259.

principle was brought forward by a soldier in a military branch of the conference. Lastly, it must be borne in mind that the denial to enemies of the *persona standi in judicio* is not the whole of the doctrine of non-intercourse. An enemy may be debarred from acquiring new rights, and yet his old rights may not, to use the language of H XXIII (h), be extinguished, suspended, or become unenforceable in a court of law. Therefore either negotiation or legislation on the subject will require very careful attention even from jurists.

Westlake, vol. 2, pp. 83–86.

The commander of an occupying army is expressly prohibited from declaring, either in his own name or in that of his Government, extinguished, suspended, or unenforceable in a Court of Law, the rights and rights of action of enemy subjects.

The ordinary courts of justice and the laws they administer should be suspended only when the refusal of the judges and magistrates to act or the behavior of the inhabitants make it necessary. In such case the occupant must establish courts of his own and make this measure known to the inhabitants.

Edmonds and Oppenheim, arts. 367, 368.

Contra.

On the ground that hostilities between nations "suspend intercourse and deprive citizens of the hostile nations of rights of an international character previously enjoyed," it was advised that so long as a state of war existed between the United States and Spain, Spanish subjects would have "no right to the privileges of copyright conferred upon Spanish citizens by proclamation prior to the declaration of war;" but that, when a treaty of peace should have been concluded, it would, if the treaty was silent on the subject, "be competent for the United States, through its executive officers, to resume the exercise of such rights and privileges as previously existed and have not been definitely declared terminated," and would be "entirely proper for the Librarian of Congress to admit Spanish subjects after the conclusion and ratification of the treaty to the same copyright privileges that they enjoyed prior to the declaration of war."

Moore's Digest, vol. 7, p. 243; 22 Op. U. S. Atty. Gen. 268.

Contra.

An alien enemy is not permitted to sue.

Moore's Digest, vol. 7, p. 253, citing Wilcox *v.* Henry, 1 Dall. 69; Matthews *v.* McStea, 91 U. S. 7; Sanderson *v.* Morgan, 39 N. Y. 231; Perkins *v.* Rogers; 35 Ind. 124: Rice *v.* Shook, 27 Ark. 137; Grinnan *v.* Edwards, 21 W. Va. 347, Haymond *v.* Camden, 22 W. Va. 180; Sturm *v.* Flemming, 22 W. Va. 404; Stephens *v.* Brown, 24 W. Va. 234.

This rule [that an alien enemy is not permitted to sue] obviously does not operate as to alien enemies who are by treaty permitted to continue their residence and business, on condition of observing the laws.

The existence of war does not prevent the citizens of one belligerent power from taking proceedings for the protection of their own property, in their own courts, against the citizens of the other, when-

ever the latter can be reached by process; and where an alien enemy is thus sued, he may defend himself in the action.

Moore's Digest, vol. 7, p. 253, citing McVeigh *v.* United States, 11 Wall. 259; United States *v.* Shares of Stock, 5 Blatchf. 231; Lee *v.* Rogers, 2 Sawyer, 549; Seymour *v.* Bailey, 66 Ill. 288; Buford *v.* Speed, 11 Bush. 338.

Contra.

The right [of an alien enemy] to sue revives after peace.

Moore's Digest, vol. 7, p. 253, citing Hanger *v.* Abbott, 6 Wall. 532; Stiles *v.* Eastley, 51 Ill. 275. See, also, Wilcox *v.* Henry, 1 Dall. 68.

Contra in part.

War does not extinguish debts due from the citizens of one belligerent to those of another; it merely suspends the remedy for their recovery.

Moore's Digest, vol. 7, p. 309, citing The State of Georgia *v.* Brailsford, 3 Dall. 1.

Contra. Hamilton v. Eaton, 2 Martin's N. Carolina Reports, 83, Scott's cases, p. 482.

The Court said:

"Debts contracted to an alien are not extinguished by the intervention of war with his nation. His remedy is suspended while the war lasts, because it would be dangerous to admit him into the country, or to correspond with agents in it; and also because the transfer of treasure from the country to his nation, would diminish the ability of the former, and increase that of the latter, to prosecute the war."

In the case of Clarke *v.* Morey, 1813, 10 Johnson, 69, it was held by Kent, C. J., that aliens residing in the United States at the time of war breaking out between their own country and the United States or who come to reside in the United States after the breaking out of war under an express or implied permission, may sue and be sued as in time of peace; that it is not necessary for this purpose that such aliens should have letters of safe conduct or actual license to reside in the United States, but that license and protection will be implied from their being suffered to remain without being ordered out of the United States by the executive. See Seymour *v.* Bailey, 1872, 66 Ill. 288, where authorities are collected.

Scott's cases, p. 545, note.

Contra, in part. Hoare v. Allen, 2 Dallas, 102.

This was an action brought in 1789, by the mortgagee, a British subject, on the mortgage debt, and the question presented was, whether interest should run during the war between Great Britain and the United States. The Court answered the question in the negative, saying:

"During a war all civil actions between enemies are suspended; debts are suspended also, but restored by the peace. For the terms of seven and a half years, viz., from the 10th September, 1775, to the 10th March, 1783, the defendant could not have paid this money to the plaintiff, who was an alien enemy, without a violation of the positive laws of this country, and of the laws of nations. They ought not, therefore, to suffer for their moral conduct, and their submission to the laws.

"Interest is paid for the use or forbearance of money. But in the case before us, there could be no forbearance because the plaintiff could not enforce the payment of the principal; nor could the defendants pay him, consistent with law; nor could they pay it without going into the enemy's country, where the plaintiff was. Where a person is prevented, by law, from paying the principal, he shall not be compelled to pay interest during the prohibition as in the case of a garnishee, in a foreign attachment."

See also Foxcroft & Galloway *v.* Nagle, 2 Dall. 132; Thomas *v.* Hunter, 29 Md. 406; Roberts *v.* Cocke, 28 Gratt. 207; McVeigh *v.* Bank of Old Dominion, 26 Gratt. 188.

Contra in part. Ex Parte Boussmaker, 13 Vesey Jun. 71.

The Court said:

"But, if the two nations were at peace at the date of the contract, from the time of war taking place the creditor could not sue; but the contract being originally good, upon the return of peace the right would revive."

Contra in part. Hanger v. Abbott, 6 Wallace, 532.

The Court said:

"Better opinion is that executed contracts such as the debt in this case, although existing prior to the war, are not annulled or extinguished but the remedy is only suspended, which is a necessary conclusion, on account of the inability of an alien enemy to sue or to sustain, in the language of the civilians, *a persona standi in judicio*."

The Supreme Court of the United States in the case of McVeigh *v.* United States, 11 Wall. 259, after citing Albrecht *v.* Sussman, 2V. and B. 324, Bacon's Abridgment and Story's Equity Pl., §53, for authority, says: "Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is clear that he is liable to be sued." It was likewise held in McVeigh *v.* United States that the right to be sued involved the right to appear in the suit, and inasmuch as the court refused McVeigh's appearance by counsel the judgment of the lower court was reversed.

Scott's cases, p. 545, and note.

Contra—executory contracts. New York Life Ins. Co. v. Stathen, 93 U. S. 24.

In this case it was held that executory contracts between persons who have become enemies, where time is material and of the essence of the contract, are annulled by the war; that life insurance policies are of this character, but that the assured is entitled to recover the equitable value of the policy at the time of the outbreak of the war.

COMPULSION ON ENEMY NATIONALS TO FIGHT AGAINST THEIR COUNTRY.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.—*Article 23, Regulations, Hague Convention IV, 1907.*

Articles 22 and 44. The German proposition. The Austro-Hungarian, Netherland, and Belgian amendments.

The amendment offered by the German delegation, especially on account of the Austro-Hungarian amendment attached to it, gave rise to lengthy discussions.

The German delegation proposed to insert in chapter I of Section II of the Regulations, between the 22nd and 23rd articles, a new article worded thus:

NEW ARTICLE 22a. It is forbidden to compel *ressortissants* of the hostile party to take part in the operations of war directed against their own country, even if they were enrolled in its service before the commencement of the war.

The amendment asked by the delegation of Austria-Hungary consists in inserting after 'to take part' the words 'as combatants.'

The new German proposal was a development of the principle accepted in 1899, as regards the forced participation of the population of occupied territory in military operations against their country, by extending to all *ressortissants* the prohibition of which the Regulations did not expressly give them the benefit. It extended it even to foreign subjects who might have been in the service of the hostile party before the commencement of the war.

It is on account of the general application of this article that the German delegation believed it incumbent upon it to propose its insertion in Section II of the Regulations, relating to the means of injuring the enemy, and the omission of the present Article 44 in Section III under the heading of 'Military authority over the territory of the hostile state.'

The committee of examination, to which the amendment was sent after a debate in the subcommission, accepted the German text without objection, saving a slight correction of form at the end of the article, replacing 'if they were enrolled in its service' by the wording 'if they were in its service * * * .'

The question of the place to be given to this new article was reserved for the drafting committee as being more especially within its competence.

The German proposition had an extensive character; the Austro-Hungarian amendment had quite a different meaning, as it permitted the compulsion of the population to render assistance of every kind short of fighting, and especially the employment of forced guides

and the furnishing of military information. The delegation of Austria-Hungary desired to draw a clear distinction between 'operations of war,' properly so called, in which the population of the hostile State can not be compelled to take part, and certain 'military services' which, according to it, in certain cases, a belligerent should be free to impose on the inhabitants.

It is on this subject that differences arose and led to lengthy debates both in the subcommission and in the committee.

The Austro-Hungarian point of view was not shared by the majority. The committee reported, on the contrary, a vote favoring in principle a Netherland amendment of an opposite tendency on the same subject. This amendment was worded thus:

ARTICLE 44a.

It is forbidden to force the population of occupied territory to give information concerning their own army or the means of defence of their country.

These two amendments came again before the subcommission and general discussion was renewed.

It entered a new phase following a proposal of the delegation of Russia suggesting acceptance of the German text of Article 22a, without the Austro-Hungarian addition, and placing it in a new chapter under Section II. This proposal was made on condition that the old text of Article 44 be preserved, instead of being suppressed as the German delegation had proposed, or replaced by the new Article 44a, as proposed by the Netherland delegation and consented to by the German and Austro-Hungarian delegations.

Another attempt at agreement combined the German proposal 22a and the Netherland proposal 44a in a single text as follows:

To replace Article 44 (whatever the place to which it may be assigned) and Article 44a proposed by the Netherland delegation by the following text:

It is forbidden to force the inhabitants of occupied territory to take part personally either directly or indirectly, collectively or individually, in military operations against their country and to demand of them information in view of such operations.

After a long discussion, this rendition, which was proposed by the Belgian delegation, was adopted by the subcommission by a majority of 3 votes (18 against 15). This small majority and a desire to reach a more complete agreement led the bureau to refer the question to the committee a second time. After a new examination, the question was raised whether it would not be best, in view of the almost unanimous agreement that had been reached on the German proposal, to withdraw the Belgian amendment that combined it with the Netherland amendment. As the delegation of Belgium did not object to this, the committee found two alternatives before it: on the one hand, the adoption pure and simple of Article 22a, with or without addition and suppression of the Article 44 now in force; on the other, the adoption of the German and Netherland amendments as two distinct Articles—22a and 44a.

The latter solution has appeared the better, with two changes in wording, to wit: 'against their country' in place of 'against their *own* country,' in Article 22a, and 'the inhabitants' in place of 'the

population' in Article 44a, which would then read: 'It is forbidden to force the inhabitants of an occupied territory to furnish information about the hostile army or its means of defense.'

As to the place for these two articles in the Regulations, the committee thought that Article 22a might be placed in Article 23 as a last paragraph; but it was aware that it was for the drafting committee to decide that point.

When the Commission on the third reading came to give its decision on this second solution as just outlined, the German text (Article 22a) was carried without objection and the Netherland text (Article 44a) by a vote of 23 against 9, with 1 not voting.

These two new texts, therefore, are now submitted to the Conference for its approval.

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," pp. 524, 525.

The inhabitants of an occupied territory who do not submit to the orders of the occupant may be compelled to do so.

The occupant, however, cannot compel the inhabitants to assist him in his works of attack or defence, or to take part in military operations against their own country (Art. 4.)

Institute, 1880, pp. 35, 36.

This provision [Hague Regulations 44, 1899] is made more general in the new regulation, which adds the important clause relating to enemy nationals serving as soldiers. Bluntschli long ago laid down the rule, by no means invariably adhered to, that, "Aliens cannot be compelled to perform military service," except when it is "necessary to defend a locality against brigands or savages." "If," he says, "they were forced to serve under the flag of another state, they might have to shed their blood for a cause which is indifferent to them, or for interests opposed to those of their fatherland." In any political war—i. e. in effect any civilised war—he held that they could not legitimately be called to arms. Another, perhaps more practical, reason for exempting them from serving against their country of origin is to be found in the consideration that the state which employs them as soldiers is forcing them to commit treason. If the provision of 1907 is complied with, as no doubt it will be, there will no longer be any uncertainty as to whether men who bear arms against their fatherland have acted of their free will and with their eyes open, or under compulsion. Their culpability will be established. The rule is sane and benignant, and makes for freedom. The growth of the modern spirit of nationalism has made impossible a revival of the old practice of incorporating in a victorious army the army of the defeated belligerent. When Frederick the Great overwhelmed Saxony in the Seven Years' War, "seventeen thousand men who had been in the camp of Pirna were half compelled, half persuaded, to enlist under the conqueror."

Spaight, p. 142; Bluntschli, sec. 391; Macaulay, *Essay on Frederick the Great.*

Voluntary service.

It is to be noted that the final paragraph of Article XXIII only forbids compulsion to serve in the enemy's army. The acceptance of voluntary service is in no wise prohibited. The man who volun-

teers to fight against his native land commits the penal offence of treason against the latter, but the belligerent who accepts his services breaks no war law. It may indeed be a nice question when compulsion begins and free-will ends.

Spaight, 144.

A belligerent is forbidden to force the enemy's nationals "à prendre part aux opérations de guerre dirigées contre leur pays." To this provision, the Austrian delegate at the Hague Conference of 1907 wished to add the words "as combatants," but the proposal was rejected. How far then does the prohibition go? It evidently means more than that a citizen of an invaded country is not to be forced to fight against his countrymen in the national armies.

Spaight, p. 150; Hague II B. B. (A), p. 102.

This article, drafted by Germany, was in 1907 rather awkwardly annexed to H. R. 23 (Art. 76, *supra*), in substitution for Art. 44 of H. R. of 1899, which ran as follows: "any compulsion on the population of occupied territory to take part in *military operations* against its own country is prohibited." The immunity now accorded to subjects of the invaded State is considerably greater than that guaranteed to them by the old articles. In the first place, it relates to taking part in any *operations of war*, a term supposed to cover many acts not amounting to what would be described as *military operations*. An Austrian amendment, which would have limited the exemption to taking part "as combatants," was accordingly rejected. In the second place, the subjects of that State are protected against compulsion to take part against their own country, even if they have previously been enrolled in the service of the invader.

The terminology employed is, however, still ambiguous. Would this article render unlawful any compulsion on inhabitants of occupied territory to execute urgently required works, such as, e. g., repairs to roads or bridges, although of ultimate military utility? A still more delicate question is whether it would protect the inhabitants from being compelled to act as guides to the enemy. The practice of exacting services of this kind was reprobated by many Powers at the Conference, but is still treated as admissible in 1902, by the *Kriegsbrauch* of the Prussian General Staff, p. 48. Cf. *Weissbuch*, p. 7. It must be noted that Germany, with several other first-class Powers, declines to accept Art. 104 (H. R. 44) *infra*.

Holland, p. 144.

Article 23 (last paragraph) and Article 44.

The alterations in these two Articles both have relation to the limits of compulsion which an invader may apply to the inhabitants of the invaded territory. They are dealt with together in the Report of Baron von Gieslingen.

The second paragraph of Article 23 is based on a proposal introduced by the German delegate. Originally it was intended to form a new Article between 22 and 23, and to take the place of Article 44; it is throughout the discussion referred to as 22a. As introduced by Germany the proposal was as follows: "A belligerent is also forbidden to compel the subjects (*ressortissants*) of the enemy to take part in the operations of war directed against their own country (*contre*

leur propre pays) even in cases where they are in the service of the other belligerent before the commencement of the war." The Austro-Hungarian delegate moved to insert the words "as combatants" after the words "take part." The Austrian amendment was opposed by the French, Belgian and Swiss delegates as legalising the employment of guides taken from the population of the invaded country. The Austro-Hungarian and Russian delegates supported this amendment on the ground that frequently in mountainous countries, maps were pratically valueless, and local guides were essential to an invading army. The Austrian amendment was rejected by 11 to 2, and the German proposal accepted with a slight verbal alteration. The Committee decided to suppress Article 44 (99) and in its place to insert a Dutch proposal moved by General den Beer Poortugael as 44 a. This proposal was as follows: "It is forbidden to compel the inhabitants (population) of an occupied territory to give information (*éclaircissements*) about their own army or the means of defence of their country."

The German proposal for Article 22a was a development of the principle accepted in 1899, as regards the forced participation of the inhabitants of an occupied territory in military operations against their own country, by extending to all persons therein (*ressortissants*) the prohibition in which the Regulation did not expressly give them the benefit. It even extended it to foreign subjects who might have been in the service of the other belligerent before the commencement of the war. It was on account of the general application of the Article that the German delegate proposed its insertion in the 2nd section of the Regulations, relating to the means of injuring the enemy. The German proposal had an extensive character; the Austrian had a quite different meaning, as it permitted the compulsion of the inhabitants to render assistance of every kind short of fighting, and especially the employment of forced guides, and the giving of military information. The Austro-Hungarian delegate desired to draw a clear distinction between "operations of war" in which the inhabitants of the enemy state could not be compelled to take part, and "military services" which it was sought in exceptional cases to be able to impose on them.

At the meeting of the Sub-Committee on the 24th July Baron von Gieslingen presented his report on the foregoing, and the President (M. Beernaert) summarised the position which had been reached. Baron von Gieslingen defended with considerable vehemence the Austrian amendment before mentioned. General Yermolow (Russia) again supported the Austrian view. "The services of the inhabitants," he said, "are often indispensable to the army in the form of road mending, for camps, hospital trains, etc. Such services are already authorized by Article 52 which provides that they may be required from the inhabitants for the needs of the army. Consequently if the German proposal is accepted without the addition of the Austro-Hungarian amendment, there will be a contradiction to Article 52 and the whole question will be brought into ambiguity, obscurity and confusion. Either maintain the existing rules or accept Article 22a with the Austro-Hungarian amendment."

General den Beer Poortugael (Holland) supported the recommendation of the Committee, and urged that it was immoral to authorise the practice of exacting the service of guides. General Amourel

(France) spoke in the same sense, supporting the German and Dutch proposals, because their objects were to definitely forbid (*deconsacrer l'interdiction*) the use of forced guides. Colonel Borel (Switzerland) also supported the German-Dutch proposal.

M. Beernaert (Belgium) with a view to combine the two proposals moved the following: "To replace Article 44 (or whatever be the number assigned to it) and Article 44a proposed by the Dutch delegate by the following: 'It is forbidden to force the inhabitants (*habitants*) of an occupied territory to take part personally either directly or indirectly, collectively or individually in military operations against their country and to demand from them information in view of such operations.'" The advantages claimed for this were that the word *habitants* was less equivocal than *populations*, and that the words "directly or indirectly, collectively or individually" left no doubt as to the meaning of "military operations." The Russian delegate proposed to leave Article 44 (99) intact, and to place the German proposition 22a without the Austrian amendment in a chapter by itself headed "*Des ressortissants d'un belligerant dans le territoire de la Partie adverse.*" Baron von Gieslingen still maintained his point, but professed his willingness to accept the Russian amendment if his own failed to be carried. The Belgian compromise was finally carried by the small majority of 3 (18 for, 15 against), but this was not sufficient and once more the subject was sent to the *Comité de redaction* which finally decided to retain the separate propositions 22a and 44a with the two following changes of "contre leur pays" instead of "contre leur *propre* pays" in Article 22a, and the substitution of the words *les habitants* for *la population* in Article 44a. M. Beernaert pointed out that the Russian amendment avoided the question of the employment of guides and forced information without providing a solution either way. General den Beer Poortugael then made an eloquent appeal in support of the proposed alteration. He pleaded that the greatest respect should be shown to the inhabitants of occupied districts, a principle on which Wellington had acted, and which inspired the proclamation of the King of Prussia issued at Saarbrücken in 1870. War was between states and not between individuals, the peaceful inhabitants must not be compelled to take part in it. The German proposition 22a was carried as was also the Dutch 44a, the latter by 23 to 9 with 1 abstention.

The report came before the Conference at its Fourth Plenary Meeting on the 17th August, 1908, when Article 22a was accepted unanimously, but when Article 44a was reached Baron Marschall (Germany) explained that he was unable to accept it on the ground that it was impossible to specify particular instances of acts already prohibited by Article 22a [i. e., Article 23, par. 2 of the present Regulations]. In endeavoring to do this there was a risk either of unduly limiting the freedom of military action, or of producing an interpretation which according to the maxim "qui dicit de uno, negat de altro" would allow all acts being considered lawful which were not expressly forbidden.

In signing the Convention, Germany, Austria-Hungary, Japan, Montenegro and Russia made reservations on the subject of this Article. In the introduction to the German *Weissbuch* the non-acceptance of Article 44 by Germany is explained as being due to the fact that it selects in an undesirable manner single instances from

the cases to which the principles contained in Article 23, par. 2, are applicable.

All the Powers, except China, Spain and Nicaragua, have signed this Convention and the signatory Powers in accepting these two amendments have registered a distinct advance in ameliorating the conditions of the inhabitants of invaded districts. As a result of these two Articles such persons can not be compelled to take part in "operations of war." This expression is unsatisfactorily vague, but from the discussions there can be no doubt that it was understood to include the employment of the enemy's subjects as guides; and Article 44 forbids a belligerent to force the inhabitants of "occupied" territory to furnish information about the army of the other belligerent, or about its means of defence, thus specifying in detail certain of the prohibitions expressed in more general terms in Article 23.

Article 44 (99) was ambiguous, and the employment of guides was by many authorities deemed not to be prohibited. The German General Staff treated their employment as permissible; Professor Holland also considered that their employment was not rendered unlawful by it; the Japanese resorted to this practice in their war against China. Professor Holland considers that the question is still doubtful, but Article 44 of the new Convention is much more definite than the old Article, and the amendment moved by the Austrian delegate, and supported by the Russian, was with the express object of legalising the employment of forced guides which these delegates clearly thought was forbidden. The new paragraph to Article 23 makes use of the phrase "operations of war" which may be taken to cover a wider range than "military operations." The same expression is used in Article 52, to which reference was made by the Russian delegate, and it is therein provided that the services permitted to be demanded from localities or inhabitants can only be required for the needs of the army of occupation, and must be of such a nature as not to imply any obligation on the population to take part in "operations of war" against their country.

Under Article 2 of the Convention, the Regulations only apply as between the Contracting Powers, and then only if all the belligerents are parties to the Convention. Germany, Austria, Japan, Montenegro and Russia have expressly refused to accept Article 44, but if the view above expressed is correct they are all now by virtue of their acceptance of the other Articles bound for the future to refrain from forcing inhabitants of an invaded enemy territory to act as guides to their armies.

In another direction, Article 23, par. 2, also makes an important alteration by providing that the subjects of a state in the service of the other belligerent before the outbreak of war can not be compelled to take part in operations of war directed against their own country.

Higgins, pp. 265–269.

An occupant having authority over the territory, the inhabitants are under his sway and have to render obedience to his commands. However, the power of the occupant over the inhabitants is not unrestricted, for articles 23, 44, and 45 of the Hague Regulations expressly enact, that he is prohibited from compelling the inhabitants to take part in military operations against the legitimate Govern-

ment, to give information concerning the army of the other belligerent or concerning the latter's means of defence, or to take an oath of allegiance. On the other hand, he may compel them to take an oath—sometimes called an "oath of neutrality"—to abstain from taking up a hostile attitude against the occupant and willingly to submit to his legitimate commands; and he may punish them severely for breaking this oath.

Oppenheim, vol. 2, pp. 211, 212.

By Article 23 of the Hague code for land warfare a belligerent is forbidden to compel subjects of the other side to take part in "the operations of war directed against their own country," even if they were in his service before the outbreak of hostilities. The full meaning of the phrase "operations of war" is by no means clear; and there has been a good deal of controversy as to whether the practice of impressing inhabitants of an invaded district to act as guides to the advancing columns is really prohibited. The words just quoted seem wide enough to cover such an act of compulsion. But the main argument of those who desire the cessation of a severity common enough hitherto is that Article 44 condemns it. The words are, "Any compulsion on the population of occupied territory to furnish information about the army of the other belligerent, or about his means of defence, is forbidden," and the most natural meaning to put on them is that they specify a particular instance of what is already prohibited in general terms by Article 23. Because of the dangers deemed to lurk in this particularity Germany entered a reservation against the article, and not because she shared the desire of Austria-Hungary and Russia to be free to employ impressed guides. Yet in the admirable report of the French delegation this article is praised on the ground that it solemnly prohibits so odious a practice. The emphatic rejection of an Austro-Hungarian amendment which would have allowed it, and indeed the whole course of the discussion, show that the practice was prohibited; but we shall find the prohibition in the general statements of Article 23 and Article 52 rather than in the particular assertions of Article 44.

Lawrence, pp. 417, 418.

This [H XXIII (*h*), second paragraph], is the H XLIV of 1899, transferred here in 1907 with the excision of a limitation of its benefit to "the population of occupied territory," and with the mention of "the operations of war" substituted for that of "military operations." These changes will be further noticed in commenting on the new H XLIV, p. 101, below.

Westlake, vol. 2, p. 86.

We have seen, p. 86 above, that what is now the second paragraph of H XXIII (*h*) stood here, with a limitation of its benefit to the population of occupied territory. The object of the article so framed was to condemn the forced enrolments which, as has been mentioned, used to be made in occupied territory as a consequence of the transfer of sovereignty formerly considered to have taken place. The change was made because the condemnation was felt to be based on a principle of humanity applying to all services which it might be desired to exact from enemy subjects, and this as well before as after occupation has been established.

Westlake, vol. 2, p. 101.

It is forbidden to force the population of occupied territory to take part in military operations against their own country.

Art. 16, Russian Instructions, 1904.

Interpretation of this article.—This article was introduced by Germany for the purpose of extending the principles of article 44 of the Hague Conference of 1899, which it was intended to replace, to all persons over whom a State exercised jurisdiction. The Austro-Hungarian amendment to insert the words "as combatants" after the words "take part" was rejected and the article passed substantially as proposed. The language used is still ambiguous, since it is uncertain whether it is unlawful to compel inhabitants of occupied territory to work on certain works that may be urgently required, such as roads and bridges which may be of ultimate military service, or whether these inhabitants can be compelled to act as guides by the enemy. This practice is still considered as admissible by Germany.

U. S. Manual, p. 59.

Consequently a belligerent has no right to compel, against their will, foreigners incorporated in his formations and who have not thereby acquired his nationality, to take part in operations directed against their own country.

Jacomet, p. 60.

The employment of the inhabitants on work serving the purposes of the war, for instance, works of fortification, is therefore positively forbidden.

On the contrary, they may be employed in work on the streets, on public buildings, strictly speaking, in the restoration of works of art, etc.

Jacomet, p. 76.

Obligations which are contrary to the laws of nations, such as, for example, to fight against one's own Fatherland, during the continuation of the war, cannot be imposed upon the troops capitulating.

German War Book, p. 138.

RUSES OF WAR, AND DEVICES FOR OBTAINING INFORMATION.

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.[1]—*Article 24, Regulations, Hague Convention IV, 1907.*

The wording of Article 24 (old 14) has been criticised. Taken literally this article might indeed be taken to mean that *every ruse of war* and *every method necessary to obtain information about the enemy and the country* should *ipso facto* be considered 'permissible.' It is understood that such is by no means the import of this provision, which aims only to say that ruses of war and methods of obtaining information are not prohibited as such. They would cease to be 'permissible' in case of infraction of a recognized imperative rule to the contrary.

The Brussels Article 14 particularly cited one of these imperative rules—that which forbids compelling the population of an occupied territory to take part in military operation against their own country (Article 36 of Brussels). But there are many others, such, for example, as the prohibition against the improper use of a flag of truce (Article 23 f). There are even some that are not expressly sanctioned in any article of the Declaration. And, under these conditions, and not being able to recall all these rules with regard to Article 24, the subcommission thought it was better to mention none of them, believing that the explanation now made would be sufficient to indicate the true meaning of this article.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

War makes men public enemies, but it leaves in force all duties which are not *necessarily* suspended by the new position in which men are placed toward each other. Good faith is, therefore, as essential in war as in peace, for without it hostilities could not be terminated with any degree of safety, short of the total destruction of one of the contending parties. This being admitted as a general principle, the question arises, how far we may deceive an enemy, and what stratagems are allowable in war? Whenever we have expressly or tacitly engaged to speak truth to an enemy, it would be perfidy in us to deceive his confidence in our sincerity. But if the occasion imposes upon us no moral obligation to disclose to him the truth, we are perfectly justifiable in leading him into error, either by words or actions. Feints, and deceptions of this kind are always allowable in war. It is the breach of good faith, express or implied, which constitutes the perfidy, and gives to such acts the character of *lies*.

Halleck, p. 401.

[1] This article is substantially identical with Article 24, Regulations, Hague Convention II, 1899.

Stratagems, in war, are snares laid for an enemy, or deceptions practiced on him, without perfidy, and consistent with good faith. They are not only allowable, but have often constituted a great share of the glory of the most celebrated commanders. "Since humanity obliges us," says Vattel, "to prefer the gentlest methods in the prosecution of our rights, if, by a stratagem, by a feint devoid of perfidy, we can make ourselves masters of a strong place, surprise the enemy and overcome him, it is much better, and is really more commendable to succeed in this way than by a bloody siege or the carnage of a battle. Thus, feints and pretended attacks are frequently resorted to, and men or ships are sometimes so disguised as to deceive the enemy as to their real character, and, by this means, enter a place or obtain a position advantageous to their plan of attack or of battle. But the use of stratagems is limited by the rights of humanity and the established usages of war. Even if devoid of perfidy, and consistent with the faith due to the enemy, they must not violate commercial usage, or contravene the stipulations of particular treaties. * * *."

Halleck, p. 402; Vattel, *Droit des Gens*, liv. 3, ch. 10, sec. 178.

Deceitful intelligence may be divided into two classes; false representations made in order that they may fall into the enemy's hands and deceive him, and the representations of one who feigns to betray his own party, with a view of drawing the enemy into a snare; both are justifiable by the laws of war. Commanders sometimes make false representations of the number and position of their troops, and of their intended military operations, for the purpose of having them fall into the enemy's hands, and of deceiving him; this is not only allowable, but is regarded as a commendable *ruse de la guerre*. If an officer deliberately makes overtures to an enemy, offering to betray his own party, and then deceives that enemy with false information, his procedure is deemed infamous; nevertheless, the enemy has no right to complain of the treachery, for he should not have expected good faith in a traitor. But if the officer has been tampered with by offers of bribery, he may lawfully feign acquiescence to the proposal, with the view to deceive the seducer; he is insulted by the attempt to purchase his fidelity, and he is justified in revenging himself by drawing the tempter into a snare. "By this conduct," says Vattel, "he neither violates the faith of promises, nor impairs the happiness of mankind, for criminal engagements are absolutely void, and ought never to be fulfilled, and it would be a fortunate circumstance if the promises of traitors could never be relied on, but were, on all sides, surrounded with uncertainties and danger. Therefore, a superior, on information that the enemy is tempting the fidelity of an officer or soldier, makes no scruple of ordering that subaltern to feign himself gained over, and to arrange his pretended treachery so as to draw the enemy into an ambuscade."

Halleck, p. 405; Vattel, liv. 3, ch. 10, sec. 182.

Breach of faith between enemies has always been strongly condemned, and that vindication of it is worthless which maintains that, without an express or tacit promise to our enemy, we are not bound to keep faith with him. But no rule of war forbids a commander to

circulate false information, and to use means for deceiving his enemy with regard to his movements.

Woolsey, pp. 213, 214.

This, however, will not entitle him [a commander] to use the flag or uniform of his enemy.

Woolsey, p. 214.

Deceit against an enemy is as a rule permitted; but it is clearly understood that this does not embrace the abuse of signs which are employed in special cases to prevent the exercise of force or to secure immunity from it.

Moore's Digest, vol. 7, p. 191.

Good faith must, however, always be observed with the enemy, and this article must not be taken to authorize any such acts of treachery as are expressly forbidden in Art. 76 (*b*), and in Art. 79 (H. R. 23 (*b*) and (*f*)).

Holland, p. 45.

As a general rule deceit is permitted against an enemy; and it is employed either to prepare the means of doing violent acts under favorable conditions, by misleading him before an attack, or to render attack unnecessary, by inducing him to surrender, or to come to terms, or to evacuate a place held by him. But under the customs of war it has been agreed that particular acts and signs shall have a specific meaning, in order that belligerents may carry on certain necessary intercourse; and it has been seen that persons and things associated with an army are sometimes exempted from liability to attack for special reasons. In these cases an understanding evidently exists that particular acts shall be done, or signs used, or characters assumed, for the appropriate purposes only; and it is consequently forbidden to employ them in deceiving an enemy. Thus information must not be surreptitiously obtained under the shelter of a flag of truce, and the bearer of a misused flag may be treated by the enemy as a spy; buildings not used as hospitals must not be marked with a hospital flag; and persons not covered by the provisions of the Geneva Convention must not be protected by its cross.

Hall, pp. 557, 558.

No treacherous simulation of sickness or wounds, says Dr. Oppenheim, is permitted among the ruses of war.

Spaight, p. 434; Oppenheim, vol. 2, p, 118.

War cannot be waged without all kinds of information about the forces and the intentions of the enemy and about the character of the country within the zone of military operations. To obtain the necessary information, it has always been considered lawful, on the one hand, to employ spies, and, on the other, to make use of the treason of enemy soldiers or private enemy subjects, whether they were bribed or offered the information voluntarily and gratuitously. Article 24 of the Hague Regulations enacts the old customary rule that the employment of methods necessary to obtain information about the enemy and the country is considered allowable. The fact,

however, that these methods are lawful on the part of the belligerent who employs them does not prevent the punishment of such individuals as are engaged in procuring information. Although a belligerent acts lawfully in employing spies and traitors, the other belligerent, who punishes spies and traitors, likewise acts lawfully. Indeed, espionage and treason bear a twofold character. For persons committing acts of espionage or treason are—as will be shown below in Sec. 255—considered war criminals and may be punished, but the employment of spies and traitors is considered lawful on the part of the belligerents.

Oppenheim, vol. 2, p. 196.

Ruses of war or stratagems are deceit employed during military operations for the purpose of misleading the enemy. Such deceit is of great importance in war, and, just as belligerents are allowed to employ all methods of obtaining information, so they are, on the other hand, and article 24 of the Hague Regulations confirms this, allowed to employ all sorts of ruses for the purpose of deceiving the enemy. Very important objects can be attained through ruses of war, as, for instance, the surrender of a force or of a fortress, the evacuation of territory held by the enemy, the withdrawal from a siege, the abandonment of an intended attack, and the like. But ruses of war are also employed, and are very often the decisive factor, during battles.

Of ruses there are so many kinds that it is impossible to enumerate and classify them. But in order to illustrate acts carried out as ruses some instances may be given. It is hardly necessary to mention the laying of ambushes and traps, the masking of military operations such as marches or the erection of batteries and the like, the feigning of attacks or flights or withdrawals, the carrying out of a surprise, and other stratagems employed every day in war. But it is important to know that, when useful, feigned signals and bugle-calls may be ordered, the watchword of the enemy may be used, deceitful intelligence may be disseminated, the signals and the bugle-calls of the enemy may be mimicked to mislead his forces. And even such detestable acts as bribery of enemy commanders and officials in high position, and secret seduction of enemy soldiers to desertion, and of enemy subjects to insurrection, are frequently committed, although many writers protest. As regards the use of the national flag, the military ensigns, and the uniforms of the enemy, theory and practice are unanimous in rejecting it during actual attack and defence, since the principle is considered inviolable that during actual fighting belligerent forces ought to be certain who is friend and who is foe. But many publicists maintain that until the actual fighting begins belligerent forces may by way of stratagem make use of the national flag, military ensigns, and uniforms of the enemy.

Oppenheim, vol. 2, p. 200.

Perfidy.

Stratagems must be carefully distinguished from perfidy, since the former are allowed, whereas the latter is prohibited. Halleck (I. p. 566) correctly formulates the distinction by laying down the principle that, whenever a belligerent has expressly or tacitly engaged

and is therefore bound by a moral obligation to speak the truth to an enemy, it is perfidy to betray the latter's confidence, because it contains a breach of good faith. Thus a flag of truce or the cross of the Geneva Convention must never be made use of for a stratagem, capitulations must be carried out to the letter, the feigning of surrender for the purpose of luring the enemy into a trap is a treacherous act, as is the assassination of enemy commanders or soldiers or heads of States. On the other hand, stratagem may be met by stratagem, and a belligerent cannot complain of the enemy who so deceives him. If, for instance, a spy of the enemy is bribed to give deceitful intelligence to his employer, or if an officer, who is approached by the enemy and offered a bribe, accepts it feignedly but deceives the briber and leads him to disaster, no perfidy is committed.

Oppenheim, vol. 2, p. 202.

They [stratagems] are ruses practiced on the enemy in order to mislead him and put him off his guard. That they may be used at all is due to the fact that war is a conflict of wits quite as much as a conflict of arms. In ordinary peaceful intercourse men are expected to avoid deceits, though in certain games feints of a particular kind are allowed by the rules; and he who breaks the general undertaking is a moral wrong-doer, and often a legal offender also. In war things are reversed. The general undertaking is confined to comparatively few matters. It is as immoral to violate these conventions as it would be to lie and cheat in ordinary society. But outside them, every kind of misleading device is legitimate, and the most honorable of commanders constantly resort to them.

Lawrence, p. 551.

Illegal stratagems.

Some branches of the general undertaking between belligerents are now defined and regulated by special agreements, while others derive their force from usage only. Chapter III of the Hague Code for war on land deals with flags of truce; the Geneva Convention prescribes the red cross on a white ground as the badge that exempts the personnel and material of the hospital and ambulance service from hostile attacks; the ninth Hague Convention of 1907 introduces a new sign to be hoisted over buildings entitled to be spared in bombardments by naval forces, and the tenth Hague Convention of 1907 sets forth the marks whereby military hospital ships are to be known, and the presence of which gives them protection. In all these cases the signatory powers would be dishonoring their own signatures as well as violating a wholesome and humane rule, if they either fired on the signs when properly used, or used them for other purposes than those which they indicate. Any stratagem that involved such action would be grossly illegal, and might subject its authors to severe reprisals from the enemy and punishment from their official superiors.

Lawrence, pp. 551, 552.

Stratagems that do not violate any express or tacit understanding between belligerents are perfectly lawful. Every general knows that he must guard against them by his own vigilance.

Lawrence, p. 553.

The duty of truth is relative, as we may see from the familiar instance of a wayfarer who deceives a highwayman into the belief that help is at hand, that being conduct of which no sane moralist disapproves. When we seek to generalise the conditions on which the duty depends, it would be going much too far to say that we are released from it by every failure in duty towards us. Thus, in bargaining, the certainty that the other party is trying to deceive us will not justify us in deceiving him. We must be exposed to the peril of serious damage, and that from a party whom or the cause which he maintains we regard as being in the wrong, and who has no reason to think that he is dealing with us otherwise than at arm's length. In the case of bargaining these conditions would be wanting. To break off the bargain might defeat an expectation of profit but, leaving us where we were, would not cause damage; and by continuing to bargain we continue normal relations with the party who has deceived us, and thereby prevent him from perceiving that he is dealing with us at arm's length. But war is an arm's length dealing from the first, and one in which the enemy is regarded as being in the wrong, while the damage to which we are exposed is incalculable. Therefore no duty is violated by ruses, even to the extent of spreading false reports; and even using the enemy's national flag, military ensigns and uniform, being in substance spreading a false report by acts instead of words, is allowed up to the last moment before fighting, when the true colours must be resumed.

Westlake, vol. 2, pp. 79, 80.

Exceptions.

And when usage tacitly attaches a certain meaning to acts done during war, as the offer of truce or surrender is attached to hoisting the white flag, it has always been felt that there is a real convention which cannot be broken without bad faith. Another example of conventions arising from usage is that the word of a commander given to a commander, and intended to be acted on without time for enquiry, must be truthful. Thus even French writers, military as Marbot and jurists as Pillet, severely condemn the false statement that an armistice had been concluded, by which Murat and Lannes obtained from the Prince of Auersperg the abandonment of the bridge of Spitz a few days before the battle of Austerlitz.[1] The same principles apply to certain cases concerning individuals. The giving and receiving quarter is a tacit convention or at least a convention the terms of which are not fully expressed and if one who has yielded himself a prisoner should shoot his captor after he had passed on, or should shoot any other soldier of the enemy, he would be guilty of bad faith and would justly have forfeited his life.

Westlake, vol. 2, pp. 80, 81.

Good faith.—Absolute good faith with the enemy must be observed as a rule of conduct. Without it war will degenerate into excesses and violences, ending only in the total destruction of one or both of the belligerents.

U. S. Manual, p. 60.

[1] Pillet, *Lois actuelles de la Guerre*, p. 94, quoting Marbot's Mémoires, t. 1, p. 240, and pointing out by numerous instances the defective ethics which allowed Greeks, Romans and Carthaginians to violate outrageously in spirit promises which they kept in the letter.

In general, belligerents may resort to such measures for mystifying or misleading the enemy, which the enemy ought to take measures to secure himself against, such as the employment of spies, inducing soldiers to desert, to surrender, to rebel, or to give false information to the enemy.

U. S. Manual, p. 60.

Must not involve treachery or perfidy.—The ruses of war are, however, legitimate so long as they do not involve treachery or perfidy on the part of the belligerent resorting to them. They are forbidden if they contravene any generally accepted rule.

The line of demarcation, however, between legitimate ruses and forbidden acts of treachery and perfidy is sometimes rather indistinct, and with regard to same, the writers of authority have disagreed. For example: It would be an improper practice to secure an advantage of the enemy by deliberate lying which involves a breach of faith, or when there is a moral obligation to speak the truth, such as declaring that an armistice had been agreed upon when such was not the case. On the other hand, it is a perfectly proper ruse to summon a force to surrender on the ground that it is surrounded, and thereby induce such surrender with a small force.

U. S. Manual, p. 60.

Legitimate ruses.—"Among legitimate ruses may be counted surprises; ambushes; feigning attacks, retreats, or flights; simulating quiet and inactivity; giving large outposts or a strong advanced guard to a small force; constructing works, bridges, etc., which it is not intended to use; transmitting false or misleading signals and telegraph messages, and sending false dispatches and newspapers, with a view to their being intercepted by the enemy; lighting camp fires where there are no troops; making use of the enemy's signals, bugle and trumpet calls, watchwords, and words of command; pretending to communicate with troops or reenforcements which have no existence; moving landmarks; putting up dummy guns or laying dummy mines, removing badges from uniforms; clothing the men of a single unit in the uniform of several different units so that prisoners and dead may give the idea of a large force."

U. S. Manual, p. 61.

Ruses of war are the measures taken to obtain advantage of the enemy by mystifying or misleading him. They are permissible provided they are free from any suspicion of treachery or perfidy, and do not violate any expressed or understood agreement. Belligerent forces must constantly be on their guard against, and prepared for, legitimate ruses, but they should be able to rely on their adversary's good faith and his observance of the laws of war.

Edmonds and Oppenheim, art. 139.

The employment of measures necessary for obtaining intelligence with regard to the enemy and the theatre of war is formally sanctioned by the Hague Rules.

Edmonds and Oppenheim, art. 155.

The use of these means should not constitute an act of bad faith contrary to duty, to honor, or to a plighted word.

Every belligerent has a right; to discover the signals of the enemy and to use them in order to lure him into ambuscade, to employ his bugle calls, to deceive him as to the number of his own troops by giving his cantonments and camps a peculiar location and peculiar dimensions, or as to his movements by lighting fires at an abandoned point, to convey false news to him, either by means of supposed dispatches or fabricated newspapers or by means of understandings with both sides, that is, by securing the services of the enemy's own spies. He has likewise a right to seek to procure information regarding the enemy through the aid of secret agents.

Jacomet, p. 60.

Article 24, Annex to Hague Convention IV, 1907, is substantially identical with section 174, Austro-Hungarian Manual, 1913.

ATTACK OR BOMBARDMENT OF UNDEFENDED TOWNS, ETC.

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.[1]—*Article 25, Hague Convention IV, 1907.*

Articles 25, 26, 27, and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Respecting the prohibition of bombarding towns, villages, dwellings, or buildings which are not defended (Article 25), it is proper to refer to an observation made by Colonel Gross von Schwarzhoff, who said that this prohibition certainly ought not to be taken to prohibit the destruction of any buildings whatever and by any means when military operations rendered it necessary. This remark met with no objection in the subcommission.

As has been indicated at the beginning of this report, the question was asked whether the last articles of this chapter were to be considered as applicable to bombardment of a place on the coast *by naval forces*. General den Beer Poortugael, delegate of the Netherlands, and Mr. Beernaert maintained the affirmative. But, on motion of Colonel Gilinsky, technical delegate of the Russian Government, the examination of this question was by general agreement reserved for the Commission in plenary session.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

Fortified places are alone liable to be besieged. Open towns, agglomerations of dwellings, or villages which are not defended can neither be attacked nor bombarded.

Declaration of Brussels, art. 15.

It is forbidden:

* * * * * * *

c. To attack and to bombard undefended places.

Institute, 1880, p. 33.

* * * the bombardment of open undefended towns is now unlawful. There was a common agreement upon this point at the two Brussels conferences, and it is embodied in the Oxford Code of the Institute, thus being usage if not law. A hostile fleet, therefore, would be prohibited from the destruction of the undefended seaports along our Atlantic coast.

Woolsey, pp. 223, 224.

The words "by whatsoever means" were held at the Conference of 1907 to include attack from balloons. Cf. *supra*, Art. 73 (H D .1).

[1] This article, except for the addition of the words "by whatever means," is substantially identical with Article 25, Hague Convention II, 1899.

A place, although not fortified, may be bombarded if it is defended. This article is not to be taken to prohibit the use of any means for the destruction of buildings for military reasons.

A place must not be bombarded with a view merely to the exaction from it of ransom.

Holland, p. 46.

The exceptional practice of which mention has been made consists in the bombardment, during the siege of a fortified town, of the houses of the town itself in order to put an indirect pressure on the commandant inducing him to surrender on account of the misery suffered by the inhabitants. The measure is one of peculiar cruelty, and is not only unnecessary, but more often than not is unsuccessful. It cannot be excused; and can only be accounted for as a survival from the practices which were formerly regarded as permissible and which to a certain extent lasted, as has been seen, till the beginning of the present century. For the present however it is sanctioned by usage; and it was largely resorted to during the Franco-German war of 1870.

Hall, pp. 556, 557.

Defended towns, even if unfortified, have always been regarded as liable to bombardment. Sumner, the Federal general, threatened to shell Fredericksburg, an open town, in 1862, if it sheltered Confederate troops. Similarly, in 1870, the Prussians sent in word to Elboeuf in Normandy that, unless the French troops evacuated it, they would drive them out by bombardment. "Here, then," says Mr. Sutherland Edwards, "was a case of an open town being threatened with bombardment—a fate to which, notwithstanding a popular belief to the contrary, every town, fortified or unfortified, which defends itself, is equally exposed." Vernon, an open town, was shelled because shots were fired from it upon the Prussians. It is quite beyond the point to take a belligerent to task (as M. Politis does the Turks for the shelling of Arta in 1897) for bombarding a town that is not "seriously fortified." No one can tell to-day whether a town is "seriously" fortified or not. On 20th July, 1877, Plevna was "an absolutely open town, there being no fortification of any kind." On 30th July, 1877, only half of it was surrounded by redoubts, yet its defenders were able, on that day of wrath, to hurl back a desperate Russian assault with terrible slaughter.

Spaight, p. 159; Edwards, p. 277; *R. D. I.* September–October, 1897, p. 686; W. V. Herbert, *The Defence of Plevna*, pp. 134, 163, 207.

The bombardment of undefended towns, etc., in maritime war was considered at the Hague Conference in 1907, which aimed at "applying to this operation of war the principles of the Regulations of 1899 respecting the Laws and Customs of Land War." The following rules were agreed to, and though they do not appear in the *Réglement* on Land War, they are clearly applicable to all bombardments. They practically reproduce the recommendations on the subject made by the Institute of International Law in its 1896 session, when it was unanimously agreed that there is no difference between the rules of war as to bombardment by military and naval forces.

Spaight, p. 167; Holland, *Studies in International Law*, p. 110.

The Committee which examined the question of naval bombardment at the Hague declare in their Report that "the fundamental principles governing bombardment of towns, villages, and undefended dwellings, by land forces, ought to apply equally to the bombardment of ports, towns, villages, etc., by naval belligerents," and the principles enunciated in the three articles above may be taken as representing the war law on the subject of the bombardment of undefended places, subject to such slight modifications as the difference between sea and land warfare renders necessary.

The nature of these modifications is indicated in the Report itself, which points out that while a land force is usually able to seize an undefended place and carry out any necessary destruction of stores, etc., without resorting to bombardment, a naval commander may sometimes find it impossible to do so, either because he cannot spare a landing party or because he is obliged to withdraw rapidly. Generally speaking, a land commander should have no need to resort to bombardment in the cases mentioned in the Articles quoted above; he could destroy military storehouses, etc., or enforce requisitions by other methods. But if, for some reason, it were impossible for him to send a force to seize an undefended town and destroy its military establishments, and to carry off the provisions or stores which the inhabitants refused to supply on his requisition, then military necessity would justify him in following the rules laid down for the bombardment by a naval force.

In connection with Article IV of the rules for naval bombardment, given above, it may be noted that in the British Official Laws and Customs of War, Professor Holland lays down the rule that "a place must not be bombarded with a view merely to the exaction from it of a ransom," and the rule forbidding bombardment on account of failure to pay a money contribution may also be accepted as a usage obtaining in land no less than naval war.

Spaight, p. 168; Hague II, B. B. (A), pp. 115, 117.

The addition to this Article of the words "by any means whatever" was understood to cover the case of bombardment of undefended towns by projectiles from balloons. The first Declaration of 1899 against the discharge of projectiles and explosives from balloons, a Declaration which was not limited to undefended places, was renewed in 1907, but it has not been accepted by many of the great military Powers. The words "by any means whatever" were introduced on the proposition of the French delegate, in order to make clear the illegality of employing such a method of attack against an undefended town. These words take the place of a much more lengthy proposal introduced by the Russian and Italian delegates. The prohibition is therefore of unlimited duration, whereas the Declaration lasts only until the termination of the next Conference, unless it is renewed by it.

Higgins, p. 269.

Neither bombardment nor assault, if they take place on the battlefield, needs special discussion, as they are allowed under the same circumstances and conditions as force in general is allowed. The only question here is under what circumstances assault and bombardment are allowed outside the battlefield. The answer is in-

directly given by article 25 of the Hague Regulations, where it is categorically enacted that "the attack or bombardment, by any means whatever, of towns, villages, habitations, or buildings, which are not defended, is prohibited." Siege is not specially mentioned, because no belligerent would dream of besieging an undefended locality, and because siege of an undefended town would involve unjustifiable violence against enemy persons and would, therefore, be unlawful. Be this as it may, the fact that defended localities only may now be bombarded, involves a decided advance in the view taken by International Law. For it was formerly asserted by many writers and military experts that, for certain reasons and purposes, undefended localities also might in exceptional cases be bombarded. But it must be specially observed that it matters not whether the defended locality be fortified or not, since an unfortified place can be defended. And it must be mentioned that nothing prevents a belligerent who has taken possession of an undefended fortified place from destroying the fortifications by bombardment as well as by other means.

Oppenheim, vol. 2, p. 192.

The words *by any means whatever* were inserted by the Second Peace Conference in order to make it quite clear that the article is likewise to refer to bombardment from air-vessels.

Oppenheim, vol. 2, p. 192, note. 2.

* * * had an open and undefended village been fired into, the persons responsible for such proceedings would have been justly accused of illegal barbarity.

Lawrence, p. 417.

As artillery developed while the world grew less barbarous, the terrible sufferings caused to non-combatants, and especially to women and children, by a rain of explosive shells rendered humane commanders averse to this means of destruction except against fortifications or troops. But all commanders were not humane; and it was felt that, instead of leaving individuals free to act as they pleased, the laws of war should impose restraints which could not be disregarded without certain dishonor and possible punishment * * * The [Hague] Conference of 1907 introduced the phrase "by any means whatever" into the clause prohibiting the bombardment of undefended habitations, for the express purpose of preventing the discharge of projectiles from balloons on open towns and hamlets.

Lawrence, pp. 539, 540.

The principle of H XXV is that a land force can occupy an undefended place and, if it must afterwards evacuate it, can destroy before doing so all that its military value to the enemy exposes to lawful destruction; therefore bombarding the place without or before occupying it would be wantonly to endanger both the lives of the population and the property not lawfully subject to destruction.

Westlake, vol. 2, p. 87.

The words "by any means whatever" [in article XXV, Hague Regulations] were inserted in 1907, and ensure the permanent application to this case of the prohibition to employ projectiles dropped from the sky, whatever may at the next Hague Conference be the fate of the declaration against them.

It must not be forgotten that the Hague code deals only with war between civilised states, and therefore that this article cannot be quoted against the attack or bombardment of a town not having a government sufficient to be the proper object of hostilities. Such an operation may be an example of the punitive expeditions which are necessary as pointed out on p. 59.

Another limitation of the Hague code being to land war, the article now before us has no direct application even between civilised states to the bombardment of undefended coast towns from the sea;

Westlake, vol. 2, p. 87.

In the course of military operations, the following things are prohibited:

* * * * * * *

(*f*) to attack or bombard towns, villages, habitations and buildings not occupied by the enemy or by his stores of war material.

Art. 11, Russian Instructions, 1904.

The use of balloons.—The addition of the words "by whatever means" was for the purpose of making it clear that the bombardment of these undefended localities from balloons or aeroplanes is prohibited.

U. S. Manual, p. 67.

Defended place defined.—Investment, bombardment, assault and siege have always been recognized as legitimate means of warfare, but under the foregoing rule their use is limited to defended places, which certainly will include the following:

(*a*) A fort or fortified place.

(*b*) A town surrounded by detached forts is considered jointly with such forts as an indivisible whole, as a defended place.

(*c*) A place that is occupied by a military force or through which such force is passing is a defended place. The occupation of such place by sanitary troops alone is not sufficient to consider it a defended place.

U. S. Manual, p. 67.

Investment, bombardment, assault, and regular siege are severally and jointly legitimate means of warfare. Their application, however, is strictly limited to defended localities; the bombardment or attack, by any means whatever, of undefended towns, villages, and buildings, whether fortified or not, is forbidden.

Edmonds and Oppenheim, art. 117.

It is forbidden, consequently, to throw projectiles from a balloon or from an aeroplane upon towns, villages, dwellings or buildings that are not defended, unless immovables of an immediate interest for the hostile army are concerned.

No distinction is here made between open towns and fortified towns. From the moment a stronghold opens its gates, it is forbidden to use violence against it, even by way of reprisals.

Jacomet, p. 62.

A prohibition by international law of the bombardment of open towns and villages which are not occupied by the enemy, or defended, was, indeed, put into words by the Hague Regulations, but appears superfluous, since modern military history knows of hardly any such case.

But the matter is different where open towns are occupied by the enemy or are defended. In this case, naturally all the rules stated above as to fortified places hold good, and the simple rules of tactics dictate that fire should be directed not merely against the bounds of the place, so that the space behind the enemy's firing line and any reserves that may be there shall not escape. A bombardment is indeed justified, and unconditionally dictated by military consideration, if the occupation of the village is not with a view to its defense but only for the passage of troops, or to screen an approach or retreat, or to prepare or cover a tactical movement, or to take up supplies, etc. The only criterion is the value which the place possesses for the enemy in the existing situation.

German War Book, p. 108.

Article 25 Annex to Hague Convention IV, 1907, is substantially identical with section 175, Austro-Hungarian Manual, 1913.

WARNING OF BOMBARDMENT.

The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.—*Article 26, Regulations, Hague Convention IV, 1907.* [1]

Articles 25, 26, 27, and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Report to the Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

But if a town or fortress, agglomeration of dwellings or village, is defended the officer in command of an attacking force must, before commencing a bombardment, except in assault, do all in his power to warn the authorities.

Declaration of Brussels, art. 16.

The commander of an attacking force, save in cases of open assault, shall, before undertaking a bombardment, make every due effort to give notice thereof to the local authorities.

Institute, 1880, p. 33.

When the bombardment of a fortified town is to commence it is customary, if practicable, to give notice of this, unless it is to be aided by an assault.

Woolsey, p. 224.

By "assault" a surprise attack is here intended. The besieger is under no absolute obligation to allow any portion of the population of a place to leave it, even when a bombardment is about to commence.

Holland, p. 46.

Article XXVI provides for warning being given of an intended bombardment, "except in cases of assaults." By "assault" (*attaque de vive force*) is meant a surprise attack. "All military operations, both offensive and defensive, are much more likely to be successful if they partake of the character of a surprise," and the general rule which enjoins warning must be overridden where there are military reasons against it. Ordinarily, however, a bombardment would not be in the nature of a surprise attack and the rule as to warning was pretty generally accepted even before the Hague Conference of 1899. Hood and Sherman had a passage of words in 1864 on the subject of the necessity for giving notice of a bombardment. Sherman shelled Atlanta without warning and Hood protested

[1] This article is substantially identical with Article 26, Regulations, Hague Convention, 1899.

against his action, on the ground that notification was "usual in war among civilised nations." Sherman replied:

I was not bound by the laws of war to give notice of the shelling of Atlanta, a fortified town, with magazines, arsenals, founderies [sic], and public stores; you were bound to take notice. See the books.

Sherman's contention is hardly borne out by the *Instructions* of the Government he was serving. Article 19 of the *American Instructions* lays down:

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the non-combatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

There was no question of a surprise attack at Atlanta, which was then full of non-combatants, and Sherman's view, as expressed in his quotation, cannot be reconciled with the principle laid down in this article. The same position was adopted by Bismarck in 1870, when he refused to give notice of the bombardment of Paris. The French Foreign Minister protested against the German authorities' action, in a circular addressed to the neutral Cabinets, in which he said:

The besieger is bound to announce beforehand his intention to bombard, in order to give time for non-combatants, women and children to be removed. There was no necessity for a bombardment without previous notice.

That this reading of the usage of war was the accepted one is shown by the fact that it was supported by all the foreign diplomatic agents in Paris, who protested against the omission of a notification. But Bismarck maintained that a fortified and beleaguered city ought to be prepared for bombardment and that neither law nor custom required a warning to be given, and this position is still adopted in the German official manual, *Kriegsbrauch im Landkriege*, which lays down that warning in unnecessary. So far as a surprise attack is concerned, the German view may be admitted, and it is also true in the case of a bombardment of forts or strongholds in which there are no non-combatants present. "Notification of bombardment," says Professor Le Fur, "cannot be insisted upon in the case of detached forts, coast batteries, or fortified works separated from towns * * * The garrison which occupies them is bound to be on its guard from the moment of the declaration of war." The Greeks gave no warning before their bombardment of Prevesa in 1897, but as they fired only on the fort, their action is supported by M. Politis as justifiable. When, however, the place threatened with bombardment is one containing non-combatants, and especially women and children, considerations of humanity (to say nothing of the very definite Hague regulation) clearly render a warning desirable. Bluntschli, a State-paid professor, has not hesitated to contradict the German Chancellor's contention that there is no usage or law enjoining it, and the jurists of all nations agree. Notification of a bombardment has now become the rule. Witness the bombardment of Madagascar by the French in 1895; of Manila and Santiago by the United States in 1898; of Kimberley in 1899; of Port Arthur in 1904.

Spaight, pp. 171–173; Sherman, *Memoirs*, vol. II, pp. 121, 128; Cassell's *History*, vol. II, p. 194; *R. D. I.*, September–October, 1898, p. 777; *Ibid*, September–October, 1897, p. 687; Bluntschli, sec. 504.

Regarding bombardment, article 26 of the Hague Regulations enacts that the commander of the attacking forces shall do all he can to notify his intention to resort to bombardment. But it must be emphasised that a strict duty of notification for all cases of bombardment is not thereby imposed, since it is only enacted that a commander *shall do all he can* to send notification. He cannot do it when the circumstances of the case prevent him, or when the necessities of war demand an immediate bombardment. Be that as it may, the purpose of notification is to enable private individuals within the locality to be bombarded to seek shelter for their persons and for their valuable personal property.

Oppenheim, vol. 2, p. 194.

Departure of women and children.

A custom is springing up of allowing women and children to leave a besieged place before the commencement of a bombardment, but it is not sufficiently general to have acquired binding force. During the siege of Strasburg in 1870 the Germans on two occasions allowed non-combatants to pass through their lines into a place of safety; but a few months later they declined to permit "useless mouths" to depart from Paris before the bombardment commenced, because it was the intention of their commanders to reduce the city by famine rather than capture it by fighting. All that is rendered obligatory on an enemy commander by the Hague code for land warfare and the Hague Convention concerning bombardments by naval forces is that he should give notice to the local authorities before commencing his bombardment, except when military exigencies, such as a contemplated assault, make such warning impracticable.

Lawrence, p. 417.

Dwelling houses.

* * * if women, children, and unarmed men are killed in the course of a bombardment * * * a regrettable incident has taken place, but no violation of the laws of war has been committed. Had the guns of the besiegers been deliberately turned upon the dwelling houses of the bombarded town * * * the persons responsible for such proceedings would have been justly accused of illegal barbarity.

Lawrence, p. 417.

B XVI was to a similar effect, only that "except in the case of surprise" stood in it where H XXVI, following Art. 33 of the *Manual* of the Institute of International Law, has "except in the case of an assault," and Lueder, notwithstanding the *Manual*, expressly allowed bombardment without notice as a means of hampering the defence by causing surprise and confusion. It may be hoped that such harsh doctrine will not in future be met with.

Westlake, vol. 2, p. 88.

Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

Lieber, Art. 19.

It is the duty of the commander of a detachment to announce to its inhabitants his intention to bombard a place, unless the necessities of war prevent such a course (e. g., in the case of a sudden or an unexpected attack).

Art. 14, Russian Instructions, 1904.

The American rule.—Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

U. S. Manual, p. 67.

If military exigencies permit, the commander of an attacking force must do all in his power to warn the authorities before commencing a bombardment, unless surprise is considered to be an essential element of success. There is, however, no obligation to give notice of an intended assault.

Edmonds and Oppenheim, Art. 124.

A commander who wishes to besiege a fortress or a city must make known his intention by means of a public proclamation, in which he may forbid the inhabitants of the territory to maintain communications with the besieged or to furnish them food. After the publication of such proclamation, any attempt in this direction shall be severely punished.

Jacomet, p. 61.

Contra.

If it is a question of a city surrounded by a crown of detached forts, the assailant may fire without warning upon the external forts, but before bombarding the city he must, except in case of an attack by main strength, give notice to the commander of the place.

Jacomet, p. 63.

A preliminary notification of bombardment is just as little to be required as in the case of a sudden assault. The claims to the contrary put forward by some jurists are completely inconsistent with war and must be repudiated by soldiers; the cases in which a notification has been voluntarily given do not prove its necessity. The besieger will have to consider for himself the question whether the very absence of notification may not be itself a factor of success, by means of surprise, and indeed whether notification will not mean a loss of precious time. If there is no danger of this then humanity no doubt demands such a notification.

German War Book, p. 104.

Article 26, Annex to Hague Convention IV, 1907, is substantially identical with section 176, Austro-Hungarian Manual, 1913.

General Scott, in giving an account of the siege of Vera Cruz, says that ground was broken March 18, 1847, and by the 22d heavy ordnance enough being in position, the governor of the city, who was also governor of the castle, was duly summoned to surrender. Imme-

diately on his refusal, fire on the walls and forts was opened. Some of the shot and shells unavoidably penetrated the city and set fire to many houses. By the 24th additional heavy guns were landed, and the whole was "in awful activity." The same day came a memorial from the foreign consuls, asking for a truce to enable them and the women and children among the inhabitants to withdraw in safety. "They had," says Scott, "in time been duly warned of the impending danger, and allowed to the 22d to retire, which they had sullenly neglected, and the consuls had also declined the written *safeguards* I had pressed upon them. The season had advanced, and I was aware of several cases of yellow fever in the city and neighborhood. Detachments of the enemy too were accumulating behind us, and rumors spread, by them, that a formidable army would soon approach to raise the siege. Tenderness therefore for the women and children—in the form of delay—might, in its consequences, have led to the loss of the campaign, and, indeed, to the loss of the army—two-thirds by pestilence, and the remainder by surrender. Hence I promptly replied to the consuls that no truce could be allowed except on the application of the governor (General Morales), and *that* with a view to surrender. Accordingly, the next morning General Landero, who had been put in the supreme command for that purpose, offered to entertain the question of submission. Commissioners were appointed on both sides, and on the 27th terms of surrender, including both the city and castle of Ulloa, agreed upon, signed and exchanged. The garrisons marched out, laying down their arms, and were sent home prisoners of war on parole.

Moore's Digest, vol. 7, pp. 180, 181; Scott, Autobiography, vol. 2, pp. 426–428.

The minister of the United States in Nicaragua, on his report that revolutionists had bombarded Managua from the sea without warning, killing one person near the American legation and wounding several others, was instructed "to present, either jointly with the other diplomatic representatives or in a separate note to the titular government, a protest against the waging of hostilities without warning, whereby foreigners are endangered." The minister, as it transpired, had already made a protest against the bombardment, as an "act of barbarism," to General Zelaya, president of the revolutionary junta, which was styled "Junta de Gobierno." General Zelaya, besides taking exception to the language of the protest, justified his action on the ground (1) that Managua was a fortified place in which the enemy were entrenched and from which they fired on his forces who, wishing to avert hostilities, in reality remained in front of the city several hours without firing, and (2) that a messenger with a flag of truce was sent to the officers in command in Managua and was in bad faith detained by them. The minister replied: "Your explanation is a reasonable one, and is accepted in full faith."

Moore's Digest, vol. 7, pp. 181, 182; For. Rel. 1893, 204.

WHAT BUILDINGS AND PLACES TO BE SPARED IN SIEGES AND BOMBARDMENTS—HOW DESIGNATED.

In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.—*Article 27, Regulations, Hague Convention IV, 1907.*

Article 27, Greek Amendment.

In order to bring the recommendations of the Second Commission into harmony with those of the Third Commission relating to naval bombardments, the delegation of Greece suggested the inclusion of 'historic monuments' in the list of buildings that under the terms of Article 27 should be spared as far as possible in case of bombardment.

This amendment was carried unanimously.

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," p. 526.

In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.

Art. 27, Regulations, Hague Convention II, 1899.

Articles 25, 26, 27, and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

In such cases all necessary steps must be taken to spare, as far as possible, buildings dedicated to art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings by distinctive and visible signs to be communicated to the enemy beforehand.

Art. 17, Declaration of Brussels.

In case of bombardment all necessary steps must be taken to spare, if it can be done, buildings dedicated to religion, art, science and charitable purposes, hospitals and places where the sick and wounded are gathered on the condition that they are not being utilized at the time, directly or indirectly, for defence.

It is the duty of the besieged to indicate the presence of such buildings by visible signs notified to the assailant beforehand.

Institute, 1880, p. 33.

Destruction, on the other hand, is always illegitimate when no military end is served, as in the case when churches or public buildings, not militarily used and so situated or marked that they can be distinguished, are subjected to bombardment in common with the houses of a besieged town.

Hall, p. 555.

If a commander of a besieged town uses a church as a stronghold (as the British troops did at Wakkerstroom in 1881), or as a storehouse for ammunition or military stores (as Osman, devoutest of Mohammedans, used the Plevna mosques), or as an observatory for defence purposes (as the Prussians alleged that the French used the Cathedral towers at Metz, Strassburg, and Toul), the besieger has certainly a right to shell the building. And he is not responsible for damages caused to churches and the other kinds of buildings referred to in article XXVII, through their proximity to buildings which are subject to bombardment. Over and over again churches, monuments, artistic and scientific institutions, have suffered in bombardments, and it is impossible to say whether the damage could have been avoided. The Petersburg churches were hit by the Federal shells in 1864–5 and had to be closed. In the Franco-German war, the Abbey of St. Denis was knocked to pieces by 200 shells; the beautiful cathedral of Strassburg was badly damaged; the Gothic chapel of St. Gengoulph at Toul (dating from 814 A. D.) was ruined. The churches of Longwy, Peronne, and Bitsche, were made heaps of stones and rubbish; not only the Invalides and the hospitals, but the Sorbonne, the Pantheon, the School of Law, and the Garden of Medical Botany were shelled during the bombardment of Paris. The French themselves shelled the splendid palace of St. Cloud, which was occupied by a number of Prussian officers during the investment. But the outstanding instance of destruction of this kind is that of the Library at Strassburg, when 400,000 volumes and 2,400 manuscripts were destroyed by the German cannon. It is hardly a fanciful anticipation to say that this great world-loss will make the war of 1870–1 memorable when the politics which led to it, and the names of its battles, and leaders, are forgotten. One can conceive, perhaps dimly, how it will be regarded by some future generation, in whose eyes war is nothing but a long discarded folly, like "trial by battle" in ours—one of the childish things which nations put off when they came to manhood. It will be a witmark to such a distant generation, a thing for wonder and pity, and to provoke the sense of complacent superiority, that men could actually once have given the priceless treasures of the Strassburg Library to the flames as a mere incident of their egregiously stupid methods of settling their international disputes.

Spaight, p. 185.

The deliberate shelling of historic monuments is a wanton outrage on civilisation as well as a clear breach of war law. When the French under Oudinot besieged Rome in 1849, they were careful to spare the monuments and art treasures in their bombardment, although the Cardinals, it is said, pressed for an unsparing bombardment.

Spaight, p. 188.

With a view of bringing the recommendation of the Second Committee into harmony with those of the Third Committee relating to naval bombardments the Greek delegate suggested the inclusion of "historical monuments" in the list of buildings which are to be spared, as far as possible, in bombardments. This was unanimously accepted.

Higgins, p. 270.

Incidents of siege without bombardment.

With regard to the mode of carrying out siege without bombardment no special rules of International Law exist, and here too only the general rules respecting offence and defence find application. Therefore, an armed force besieging a town may, for instance, cut off the river which supplies drinking water to the besieged, but must not poison such river. And it must be specially observed that no rule of law exists which obliges a besieging force to allow all non-combatants, or only women, children, the aged, the sick and wounded, or subjects of neutral Powers, to leave the besieged locality unmolested. Although such permission is sometimes granted, it is in most cases refused, because the fact that non-combatants are besieged together with the combatants, and that they have to endure the same hardships, may, and very often does, exercise pressure upon the authorities to surrender. Further, should the commander of a besieged place expel the non-combatants in order to lessen the number of those who consume his store of provisions, the besieging force need not allow them to pass through its lines, but may drive them back.

That diplomatic envoys of neutral Powers may not be prevented from leaving a besieged town is a consequence of their exterritoriality. However, if they voluntarily remain, may they claim uncontrolled communication with their home State by correspondence and couriers? When Mr. Washburne, the American diplomatic envoy at Paris during the siege of that city in 1870 by the Germans, claimed the right of sending a messenger with despatches to London in a sealed bag through the German lines, Bismarck declared that he was ready to allow foreign diplomatists in Paris to send a courier to their home States once a week, but only under the condition that their despatches were open and did not contain any remarks concerning the war. Although the United States and other Powers protested, Bismarck did not alter his decision. The whole question must be treated as open.

Oppenheim, vol. 2, pp. 193, 194.

Article 27 of the Hague Regulations enacts the hitherto customary rule that all necessary steps must be taken to spare as far as possible all buildings devoted to religion, art, science, and charity; further, historic monuments, hospitals, and all other places where the sick and wounded are collected, provided these buildings, places, and monuments are not used at the same time for military purposes. To enable the attacking forces to spare these buildings and places, the

latter must be indicated by some particular signs, which must be previously notified to the attacking forces and must be visible from the far distance from which the besieging artillery carries out the bombardment.

It must be specially observed that no legal duty exists for the attacking forces to restrict bombardment to fortifications only. On the contrary, destruction of private and public buildings through bombardment has always been and is still considered lawful, as it is one of the means to impress upon the authorities the advisability of surrender. Some writers assert either that bombardment of the town, in contradistinction to the fortifications, is never lawful, or that it is only lawful when bombardment of the fortifications has not resulted in inducing surrender. But this opinion does not represent the actual practice of belligerents, and the Hague Regulations do not adopt it.

Oppenheim, vol. 2, p. 195.

No siege takes place without the besieged accusing the besiegers of neglecting the rule that buildings devoted to religion, art, charity, the tending of the sick, and the like, must be spared during bombardments. The fact is that in case of a bombardment the destruction of such buildings cannot always be avoided, although the artillery of the besiegers do not intentionally aim at them. That the forces of civilised States intentionally destroy such buildings, I cannot believe.

Oppenheim, vol. 2, p. 195, note 1.

In 1899 the Boer General, Joubert, agreed not to fire on the Intombi Camp, a place at a little distance from besieged Ladysmith, but within the perimeter of the defending lines. Thither the sick and wounded were sent, and also women and children. They helped to consume the stores of the town, but were safe from the shells of the investing forces.

Lawrence, p. 540.

It [The Hague Conference of 1907] also added historic monuments to the list of things against which artillery is not to be directed.

Lawrence, p. 540.

Firing on houses.

Thus firing on the houses of a fortified town is not forbidden, but when it can be avoided it is cruel, it is generally useless, and it ought to be forbidden unless there is reason to suspect that the houses are occupied by troops of the garrison or are used as magazines.

Westlake, vol. 2, p. 89.

During sieges and bombardments measures should be taken to preserve, as far as possible, the temples and the edifices used as museums, schools, asylums, hospitals, or edifices used for sheltering the wounded, provided said places are not used at the same time for military purposes.

All the places above mentioned should be marked by special signs which should be made known to the besieger in time.

Art. 15, Russian Instructions, 1904.

Use of Geneva flag limited to hospitals, etc.—Only hospitals and places where the sick and wounded are located can be indicated by means of the red cross on a white ground. It is certainly desirable,

in order to avoid injury from actual or erratic shots, that the sick and wounded in besieged places should be concentrated in some safe place, preferably in neutral territory, if possible to arrange.

U. S. Manual, p. 70.

Although the bombardment of the private and public buildings of a defended town or fortress is lawful, all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected.

It is the duty of the besieged to indicate such buildings or places by distinctive and visible signs which must be notified to the enemy beforehand.

To indicate hospitals and other medical establishments the emblem of a red cross on a white ground is authorized. As this emblem must not be used for any other purpose some other visible sign must be employed to indicate other privileged buildings.

Edifices for which inviolability is thus claimed must not be used at the same time for military purposes, as, for instance, for offices and quarters, or for signaling stations or observatories. If this condition is violated, the besieger is justified in disregarding the sign.

Edmonds and Oppenheim, arts. 133–136.

The protecting sign of inviolable buildings shall be the flag of the Red Cross for the structures of the hospital service.

Any land army cooperating in a naval engagement must know these signs and respect the monuments which bear them.

It is to be desired that the same distinctive signs may be used for the protection of monumental structures in continental warfare.

A besieged party who thus requests the protection of an edifice, thereby pledges his honor that it will not be used for a military purpose.

The slightest military use by the besieged of an edifice thus protected (for instance, the fact of placing an observer therein) justifies its destruction by the besieger. The latter shall furthermore be warranted in showing great distrust throughout the duration of the siege.

Jacomet, p. 64.

The only exemption from bombardment recognized by international law, through the medium of the Geneva Convention, concerns hospitals and convalescent establishments. Their extension is left to the discretion of the besieger.

German War Book, p. 105.

But this does not preclude the exemption by the besieger of certain sections and buildings of the fortress or town from bombardment, such as churches, schools, libraries, museums, and the like, so far as this is possible.

But of course it is assumed that buildings seeking this protection will be distinguishable and that they are not put to defensive uses. Should this happen, then every humanitarian consideration must give way.

German War Book, p. 105.

Article 27, Annex to Hague Convention IV, 1907, is substantially identical with section 177, Austro-Hungarian Manual, 1913.

PILLAGING PROHIBITED IN WARFARE.

The pillage of a town or place, even when taken by assault, is prohibited.[1]—*Article 28, Regulations, Hague Convention IV, 1907.*

Articles 25, 26, 27 and 28 are almost word for word the same as Articles 15 to 18 of the Brussels project, the slight modifications therein being purely in expression.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

A town taken by assault ought not to be given over to pillage by the victorious troops.

Art. 18, Declaration of Brussels.

It is forbidden:

a. To pillage, even towns taken by assault.

Institute, 1880, p. 33.

We do not, at the present day, often hear, when a town is carried by assault, that the garrison is put to the sword in cold blood, on the plea that they have no right to quarter. Such things are no longer approved or countenanced by civilized nations. But we sometimes hear of a captured town being sacked, and the houses of the inhabitants being plundered, on the plea that it was impossible for the general to restrain his soldiery in the confusion and excitement of storming the place; and under that softer name of *plunder*, it has sometimes been attempted to veil "all crimes which man, in his worst excesses, can commit; horrors so atrocious that their very atrocity preserves them from our full execration, because it makes it impossible to describe them." It is true that soldiers sometimes commit excesses which their officers cannot prevent; but, in general, a commanding officer is responsible for the acts of those under his orders. Unless he can control his soldiers, he is unfit to command them. The most atrocious crimes in war, however, are usually committed by militia, and volunteers, suddenly raised from the population of large cities, and sent into the field before the general has time or opportunity to reduce them to order and discipline. In such cases the responsibility of their crimes rests upon the state which employs them, rather than upon the general who is, perhaps, unwillingly, obliged to use them.

Halleck, p. 442.

On the land, interference with private property, by stripping families of their all, is often the source of the deepest misery. Even if pillage on the land be entirely given up, the presence of an invading army in a country, the expense of warfare on the land, the contributions and requisition which can never entirely cease, the suspension of industry in invaded districts, or by the call of a multitude

[1] This article is identical with Article 28, Regulations, Hague Convention II, 1899.

of men to defend their country, are far beyond the evils of naval warfare. It also embitters feeling, and drives non-combatants into guerilla warfare or into the regular service. Invasion always arouses a national spirit; but invasion with plunder rather defeats the end of war than promotes it, until a nation is bowed down to the dust. And at that point of time it disables the conquered from giving the compensation for which the war was set on foot.

Woolsey, p. 200.

Formerly, it was regarded somewhat in the light of a crime, if a commander of a fortress held out as long as he could, and instances may be adduced where such officers were put to death for their obstinacy. In 1794 the French convention voted, that if a garrison did not surrender within twenty-four hours after the demand was made, it should be put to the sword. Now the propriety of defending a fort is to be determined by its commandant only, and holding out to the last can be visited with no penalty.

When a fortified town has been stormed, the usage of ancient warfare was to let the soldiers have full license. The frightful scenes at the storms of Ciudad Rodrigo, Badajos, and St. Sebastian, under so humane a general as Wellington, show that it was thought impossible at such times to curb the ferocity of soldiers. But in modern warfare the only excesses are in killing after resistance has been overcome, owing to the fragmentary nature of the struggle and the uncertainty as to the cessation of resistance. Pillage, rape, murder, it is believed, no longer add to the horrors of a stormed town.

Woolsey, p. 224.

It is not so very long since European commanders claimed a war right to give over to pillage a town which had maintained its resistance until sacked, and their view was endorsed by writers on International Law. General Halleck, doubly qualified to state the usages of war of his time, gives as one of the exceptions to the rule exempting private property from capture the case of "property taken on the field of battle or in storming a fortress or town." But Lieber's *Instructions* enunciate a more commendable rule of law than that of Lincoln's Chief of the Staff. Article 44 prohibits under penalty of death "all robbery, all pillage or sacking, even after taking a place by main force." And Bluntschli's great work, published a few years later (1868), states that "it is not good war, to promise soldiers freedom to pillage a place or camp, as an encouragement for the assault." "It is contrary to military honour," he says, "to incite soldiers to do their duty by encouraging them to become brigands."

Spaight, p. 190; Boyd's Wheaton, p. 411; Bluntschli, sec. 662.

The prohibition of pillage does not extend to *booty* or spoil of war. As Baron Jomini, the President, remarked at Brussels, "there is a kind of booty which is allowed on the field of battle, for instance, that which consists of horses, munitions, cannon, etc.,—it is the booty gained at the cost of private property which the Committee wish to forbid." Arms, equipment, uniforms, horses, army stores and supplies, and public moneys—generally speaking, such things as are provided for in Army Estimates—come under the head of permissible booty. In the list of the "spoils of war" taken by the

Japanese at Mukden and Fushun, the following items appear:—Arms, ammunition of all sorts, engineering tools, iron wire, horseshoes, clothing, accoutrements, machinery for coal mining, timber, horses, bread, fuel, forage, cereals, millet, beans, unrefined salt, preserved provisions, oxen, tents, beds, stoves, telephones, balloon-waggons, and ropes. Cash belonging to the public Treasury is always subject to seizure; the Germans appropriated very large sums which they found in Strassburg and Toul in 1870.

Spaight, p. 198; Brussels, B. B., p. 298.

Professor Bonfils lays down in general terms that, "the right of booty extends only to the fortune of the belligerent State, to the arms and equipment of the defeated troops, and to contraband of war." Contraband of war is a dangerous phrase to apply outside of its proper element of maritime war. Mr. Hall states more specifically that "arms and munitions in the possession of the enemy's force, are confiscable as booty, although they may be private property." I cannot agree with this view. Article LIII (which I shall deal with more fully in its proper place) makes it clear that it is only Government property which is confiscable; arms and other articles which would be classed as contraband of war at sea, and therefore subject to capture, do not pass to the captor on land, if they are owned by private individuals. The enemy may seize them, but he must either restore them or pay compensation.

Spaight, p. 200; Bonfils, sec. 1230; Hall, p. 435.

No special rules of International Law exist with regard to the mode of carrying out an assault. Therefore, only the general rules respecting offence and defence find application. It is in especial not necessary to give notice of an impending assault to the authorities of the respective locality, or to request them to surrender before an assault is made. That an assault may or may not be preceded or accompanied by a bombardment, need hardly be mentioned, nor that by article 28 of the Hague Regulations pillage of towns taken by assault is now expressly prohibited.

Oppenheim, vol. 2, p. 193.

The Brussels Conference of 1874 began the process of making mercy obligatory by laying down that captured towns were not to be plundered, and Article 28 of the Hague Regulations of 1907 completed it by forbidding the "pillage of a town or place even when taken by assault."

Lawrence, p. 421.

The plea that the assaulting troops must be rewarded for their exertions by the plunder of the captured place is simply infamous, and as ignorant as it is evil. Towns are now defended by forts and earthworks erected at a considerable distance from the houses. There is therefore but little danger of the rush of an infuriated soldiery into the streets after a successful assault. In the American Civil War, for example, Richmond fell as soon as the lines of Lee were pierced at Petersburg; and before the soldiers of the Union could reach the city the Confederates had time to evacuate it, after setting fire to the government stores and thus causing the destruction that their victorious foes endeavored to prevent.

Lawrence, p. 421.

All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

Lieber, art. 44.

In the course of military operations, the following things are prohibited:

* * * * * * *

(*g*) to pillage inhabited places, even those taken by assault.

Art. 11, Russian Instructions, 1904.

All pillage is rigorously prohibited under penalty of the severest punishment (the penalty of death being included.)

Art. 12, Russian Instructions, 1904.

Private property can be seized only by way of military necessity for the support or other benefit of the Army or of the occupant. All destruction of property not commanded by the authorized officer, all pillage or sacking, even after taking a town or place by assault, are prohibited under the penalty of death, or such other severe punishment as may seem adequate to the gravity of the offense. A soldier, officer, or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

U. S. Manual, p. 120.

The giving over to pillage of a town or place, even when taken by assault, is forbidden.

Edwards and Oppenheim, art. 138.

Once the surrender of a fortress is accomplished, then, by the usages of war to-day, any further destruction, annihilation, incendiarism, and the like, are completely excluded. The only further injuries that are permitted are those demanded or necessitated by the object of the war, *e. g.*, destruction of fortifications, removal of particular buildings, or in some circumstances of complete quarters, rectification of the foreground and so on.

German War Book, p. 107.

Article 28, Annex to Hague Convention IV, 1907, is substantially identical with section 178, Austro-Hungarian Manual, 1913.

SPY DEFINED—WHO ARE NOT SPIES.

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of despatches intended either for their own army or for the enemy's army. To this class belong likewise persons sent in balloons for the purpose of carrying despatches and, generally, of maintaining communications between the different parts of an army or a territory.[1]*—Article 29, Regulations, Hague Convention IV, 1907.*

Chapter II, Spies (Articles 29 to 31).

The three articles of this chapter reproduce almost literally the wording of Articles 19 to 22 of the Brussels project. Former Articles 19 and 22 have, on the motion of General Mounier, technical delegate of the French Government, merely been combined to form Article 29. These two provisions in reality deal with a single idea, which is to determine who can be considered and treated as a spy, and to specify at once, *merely by way of example*, some special cases in which a person can not be considered as a spy.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavors to obtain information in the districts occupied by the enemy, with the intention of communicating it to the hostile party.

Art. 19, Declaration of Brussels.

Individuals captured as spies cannot demand to be treated as prisoners of war.

Institute, 1880, p. 31.

Individuals who form a part of the belligerent armed force, if they fall into the hands of the enemy, are to be treated as prisoners of war, in conformity with Articles 61 *et seq.*

[1] This article is substantially identical with Article 29, Regulations, Hague Convention II, 1899.

The same rule applies to messengers openly carrying official despatches, and to civil aëronauts charged with observing the enemy, or with the maintenance of communications between the various parts of the army or territory.

Institute, 1880, p. 31.

Individuals may not be regarded as spies, who, belonging to the armed force of either belligerent, have penetrated, without disguise, into the zone of operations of the enemy—nor bearers of official dispatches, carrying out their mission openly, nor aëronauts (article 21).

Institute, 1880, p. 32.

Spies are persons who, *in disguise*, or *under false pretenses*, insinuate themselves among the enemy, in order to discover the state of his affairs, to pry into his designs, and then communicate to their employer the information thus obtained. The employment of spies is considered a kind of clandestine practice, a deceit in war, allowable by its rules. "Spies," says Vartel, "are generally condemned to capital punishment, and not unjustly; there being scarcely any other way of preventing the mischief which they may do. * * *"

Halleck, p. 406; Vattel, liv. 3, ch. 10, sec. 79.

The term *spy* is frequently applied to persons sent to reconnoitre an enemy's position, his forces, defenses, etc., but not in disguise, or under false pretenses. Such, however, are not *spies* in the sense in which that term is used in military and international law, nor are persons so employed liable to any more rigorous treatment than ordinary prisoners of war. It is the *disguise*, or *false pretense*, which constitutes the perfidy, and forms the essential elements of the crime, which, by the laws of war, is punishable with an ignominous death.

Halleck, p. 406.

But military spies in their regimentals, when taken, are treated as ordinary prisoners of war.

Woolsey, p. 225.

A spy is a person who penetrates secretly, or in disguise or under false pretences, within the lines of an enemy for the purpose of obtaining military information for the use of the army employing him. Some one of the above indications of intention being necessary to show the character of a spy, no one can be treated as such who is clothed in uniform, who whether in uniform or not has accidentally strayed within the enemy's lines while carrying despatches or messages, or who merely endeavors to traverse those lines for the purpose of communicating with a force beyond or of entering a fortress.

Hall, p. 559.

Together with spies, as noxious persons whom it is permitted to execute, but differing from them in not being tainted with dishonor, and so in not being exposed to an ignominious death, are bearers of despatches or of verbal messages, when found within the enemy's lines, if they travel secretly, or, when soldiers, without uniform, and persons employed in negotiating with commanders or political leaders intending to abandon or betray the country or party to which they belong.

Hall, p. 560.

A strong inclination was shown by the Germans during the war of 1870 to treat as spies persons passing over the German lines in balloons. 'All persons,' says Colonel Walker in writing to Lord Granville, 'who attempt to pass the Prussian outposts without permission, whether by land, water or air,' were 'deported to Prussia under suspicion of being French spies;' and it was declared by Count Bismark, in writing of an English subject captured in a balloon, that apart from the fact that he was suspected to be the bearer of illicit correspondence, his arrest and trial by court-martial 'would have been justified, because he had spied out and crossed our outposts and positions in a manner which was beyond the control of the outposts, possibly with a view to make use of the information thus gained, to our prejudice.' As a matter of fact, though persons captured from balloons were in no case executed as spies, they were treated with great severity. A. M. Verrecke, for example, dropped with some companions in Bavaria, and was of course captured; the whole party were sent to a military prison, and only liberated two months after the signature of peace. A. M. Nobécourt had his balloon fired upon, and when subsequently captured, he was condemned to death; the sentence was commuted to fortress imprisonment at Glatz. Neither secrecy, nor disguise, nor pretence being possible to persons travelling in balloons, the view taken by the Germans is inexplicable; and it is satisfactory to notice that the treatment of balloon travellers as spies was forbidden in the proposed Declaration of Brussels, and that their right to be treated as prisoners of war is affirmed in the French official manual for the use of military officers.

Hall, pp. 560, 561.

To claim the benefit of the second clause of this article [29, Hague Regulations, 1907,] soldiers must be in uniform.

Persons in balloons are not spies, even if engaged in observing the movements of the enemy.

The examples given in this article are not intended to be exhaustive.

Holland, p. 47.

Article XXIX lays down the conditions precedent which establish the character of the spy, in the esoteric sense of the word. They are:—

(1) the obtaining or seeking to obtain military information for the belligerent employing him;

(2) doing so clandestinely or under false pretences; and

(3) doing so in the zone of operations of the other belligerent.

These three conditions are expressly specified in the first paragraph of the article; but, perhaps through some error in drafting, the second paragraph goes on to speak of *messengers* and *despatch bearers* (who do not seek information at all and are therefore lacking in the essential condition No. (1) above), and lays down that such persons are not considered spies if they carry out their mission openly; implying, as a necessary inference, that, if they do not carry out their mission openly, they may be regarded as spies. One can therefore only conclude that, as the conventional war law of the

subject stands, the following proviso must be added to the three conditions mentioned above, namely:—

(4) Messengers and despatch-bearers are assimilated to spies if they come under conditions (2) and (3).

Spaight, p. 202.

Reconnaissance and scouting, however daring, are not spying if there is no disguise. This point was brought out clearly at the Brussels Conference, the Protocols of which show that the delegates were agreed that soldiers wearing uniform "are considered as patrols who are lawfully reconnoitring; but if, in order to do this, they put on the uniform of the enemy, or disguise themselves in any manner whatever, they are considered and treated as spies." To establish the quality of spy in the case of a soldier, there must be disguise; in the case of the civilian spy, disguise is not essential—the clandestine nature of the act is sufficient condemnation.

Spaight, p. 203; Brussels B. B., p. 311.

And as to messengers carrying despatches to their own army or Government through the enemy's lines, they can hardly be conceived, in any circumstances, as likely to "carry out their mission openly."

* * *

The explanation of the clause about despatch-bearers is quite possibly that given by Professor Pillet, who says: "It appears to me that there has been some mistake in the drafting of the text and that the word *openly*, which would have been in place if used of persons seeking information (spies), has no meaning when applied to messengers." I am, however, inclined to the view that what the Conference intended was to assimilate to spies messengers seeking to pass through an enemy's lines clandestinely or under false pretences: *e. g.* a soldier in disguise, or a civilian who pretended to come on commercial business. This view is borne out by paragraph 99 of the *American Instructions*, which says:

> A messenger carrying written despatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army, or its Government, if armed, and in the uniform of his army, and if captured while doing so, in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances must determine the disposition that shall be made of him.

"To make sense of this provision," says M. Paul Carpentier, referring to the Hague Article, "it must be taken for granted that a courier or a non-military messenger will only be treated as a spy if he has committed *some positive act of dissimulation or perfidy*."

Spaight, p. 214; Pillet, p. 472.

"Neither under the usages of war observed by civilised nations, nor under the terms of the Declaration of Brussels [*i. e.* now, the Hague *Règlement*], can individuals whose sole crime has been the transmission of letters from one division to another, be assimilated to spies."

Spaight, p. 215; De Martens, p. 407.

They [the Hague Regulations] further mark the definite abandonment of the strange theory adopted by the Germans during the siege of Paris in 1870–1871, that those who reconnoitred from balloons

were guilty of espionage and therefore liable to the penalty of death. The still more strange theory of Admiral Alexieff, produced during the Russo-Japanese War, that newspaper correspondents sending off messages by wireless telegraphy from neutral steamers might be treated as spies seems to have perished at the moment of its birth.

Lawrence, *War and Neutrality in the Far East*, 2d ed., pp. 83–92.

Espionage must not be confounded, firstly, with scouting, or secondly, with despatch-bearing. According to article 29 of the Hague Regulations, espionage is the act of a soldier or other individual who clandestinely, or under false pretenses, seeks to obtain information concerning one belligerent in the zone of belligerent operations with the intention of communicating it to the other belligerent. Therefore, soldiers not in disguise, who penetrate into the zone of operations of the enemy, are not spies. They are scouts who enjoy all privileges of the members of armed forces, and they must, if captured, be treated as prisoners of war. Likewise, soldiers or civilians charged with the delivery of despatches for their own army or for that of the enemy and carrying out their mission openly are not spies. And it matters not whether despatch-bearers make use of balloons or of other means of communication. Thus, a soldier or civilian trying to carry despatches from a force besieged in a fortress to other forces of the same belligerent, whether making use of a balloon or riding or walking at night, may not be treated as a spy. On the other hand, spying can well be carried out by despatch-bearers or by persons in a balloon, whether they make use of the balloon of a despatch-bearer or rise in a balloon for the special purpose of spying. The mere fact that a balloon is visible does not protect the persons using it from being treated as spies; since spying can be carried out under false pretences quite as well as clandestinely. But special care must be taken really to prove the fact of espionage in such cases, for an individual carrying despatches is prima facie not a spy and must not be treated as a spy until proved to be such.

Oppenheim, vol. 2, p. 197.

War treason—Case of André.

A remarkable case of espionage is that of Major André, which occurred in 1780 during the American War of Independence. The American General Arnold, who was commandant of West Point, on the North River, intended to desert the Americans and join the British forces. He opened negotiations with Sir Henry Clinton for the purpose of surrendering West Point, and Major André was commissioned by Sir Henry Clinton to make the final arrangements with Arnold. On the night of September 21, Arnold and André met outside the American and British lines, but André, after having changed his uniform for plain clothes, undertook to pass the American lines on his return, furnished with a passport under the name of John Anderson by General Arnold. He was caught, convicted as a spy, and hanged. As he was not seeking information, and therefore was not a spy according to article 29 of the Hague Regulations, a conviction for espionage would not, if such a case occurred to-day, be justified. But it would be possible to convict for war treason, for André was

no doubt negotiating treason. Be that as it may, George III considered André a martyr, and honoured his memory by granting a pension to his mother and a baronetcy to his brother.

Oppenheim, vol. 2, p. 198.

A case of espoinage, remarkable on account of the position of the spy, is that of the American Captain Nathan Hale, which occurred in 1776. After the American forces had withdrawn from Long Island, Captain Hale recrossed under disguise and obtained valuable information about the English forces that had occupied the island. But he was caught before he could rejoin his army, and he was executed as a spy.

Oppenheim, vol. 2, p. 199.

War treason.

[A case illustrative of the difference between espionage and war treason] occurred in the summer of 1904, during the Russo-Japanese War. Two Japanese disguised in Chinese clothes were caught in the attempt to destroy, with the aid of dynamite, a railway bridge in Manchuria, in the rear of the Russian forces. Brought before a court-martial, they confessed themselves to be Shozo Jakoga, forty-three years of age, a Major on the Japanese General Staff, and Teisuki Oki, thirty-one years of age, a Captain on the Japanese General Staff. They were convicted, and condemned to be hanged, but the mode of punishment was changed and they were shot. All the newspapers which mentioned this case reported it as a case of espionage, but it is in fact one of war treason. Although the two officers were in disguise, their conviction for espionage was impossible according to article 29 of the Hague Regulations, provided, of course, thay were court-martialed for no other act than the attempt to destroy a bridge.

Oppenheim, vol. 2, p. 315.

* * * an army in the field is entitled to protect itself from spying even in places only visited by its scouts. Where the danger to the spy is great enough for him to resort to clandestinity or false pretences, the danger to the army spied on must be great enough to justify the severity necessary for its protection.

Westlake, vol. 2, p. 90.

Guides.

Guides are not spies. If they are captured and are soldiers they become prisoners of war. If they are civilians, an invading army might find it necessary to detain them; but subjects of the country who are caught guiding an invading army without being compelled to do so are liable to punishment for treason.

Westlake, vol. 2, p. 90.

Ballooning for information.

The article [29 Hague Regulations] leaves open the case of persons sent in balloons in order to gain information. In the war of 1870 the Germans claimed to treat these as spies, and actually imprisoned them in fortresses; but there is no justification for this, ballooning for information being free from clandestinity and false pretences, although it is a participation in the war, and therefore civilians as well as soldiers may be made prisoners of war for it.

Westlake, vol. 2, p. 90.

A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

Lieber, art. 88.

An individual who, acting secretly or under false pretenses, tries to obtain any information in the zone of our operations with the intention of communicating it to the enemy, is considered a spy.

Art. 42, Russian Instructions, 1904.

The following are not considered spies:

(1) soldiers not in disguise who have penetrated into the zone of operations of the belligerent to obtain information;

(2) soldiers or civilians who carry out their mission openly and are charged with transmission of despatches destined either for their own army or for that of the enemy.

(3) persons sent out in balloons to maintain communications between the various parts of an army or a territory.

Art. 44, Russian Instructions, 1904.

Recognition of necessity for obtaining information.—In the foregoing rule and in H. R. XXIV is distinct recognition of the necessity for employing spies and other secret agents for obtaining information about the enemy, so that the acquirement of such information by secret methods is regulated by the laws and usages of war.

U. S. Manual, p. 63.

Who included in definition.—The definition above comprehends all classes whether officer, soldier, or civilian, and, like the criminal law, makes no distinction as to sex. As to the offense, it limits the same to securing information clandestinely or on false pretences in the zone of operations. It does not include all cases in which a person makes or endeavors to make unauthorized or secret communications to the enemy. These latter cases must therefore be dealt with under the laws relating to treason and espionage.

U. S. Manual, p. 63.

Punishment of spies.—The spy is punishable with death, whether or not he succeed in obtaining the information or in conveying it to the enemy.

U. S. Manual, p. 64.

Although any person who makes or endeavours to make unauthorized or secret communications to the enemy, or to collect information secretly for him, is ordinarily spoken of as a spy, the Hague Rules provide a definition of spy as regards land warfare which does not cover all such cases. For this reason the subject must be dealt with under the two headings of espionage and treason.

According to the Hague Rules a person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the zone of operations of a

belligerent with the intention of communicating it to the hostile party.

The Hague Rules give several examples of persons who can not be accounted spies, for instance: soldiers not wearing disguise who have penetrated into the zone of operations of the hostile army, and despatch bearers, whether soldiers or civilians, who carry out their mission openly. It is also expressly mentioned that persons sent in balloons either for the purpose of carrying despatches or maintaining communication are not as such liable to be treated as spies.

The principal characteristic of the offence is dissimulation of the object pursued.

It follows from the definition of spy that an officer or soldier who is discovered in the enemy's line dressed as a civilian, or wearing the enemy's uniform, may be presumed from the circumstances to be a spy, unless he is able to show that he had no intention of obtaining military information.

The fact that a person acting as a spy is in the naval or military service of his State, does not screen him from punishment should he be apprehended by the enemy. Nor does the fact that he is in uniform make it impossible for him to be a spy.

The Hague Rules do not refer to cases in which inhabitants of invaded or occupied territory, or enemy subjects residing in or visiting the territory of a belligerent, furnish, or attempt to furnish, information to the enemy. Such persons may be technically outside the zone of operations. They may without using any disguise merely report what they see, or what they obtain by the use of paid agents, and they may forward information by post or special messenger. Thus they might not in any way come under the definition of a spy as laid down in the Hague Rules.

Edmonds and Oppenheim, arts. 160–166.

Persons belonging to the hostile army and sent in a balloon or aeroplane to gather information concerning the enemy and the ground should not be considered as spies if they are clothed in their uniform or bear the distinctive sign of the belligerent.

Jacomet, p. 65.

A spy was defined by the German army staff in 1870 as one "who seeks to discover by clandestine methods, in order to favor the enemy, the position of troops, camps, etc.; on the other hand enemies who are soldiers are only to be regarded as spies if they have violated the rules of military usages, by denial or concealment of their military character."

German War Book, p. 125.

Participation in espionage, favoring it, harboring a spy, are equally punishable with espionage itself.

German War Book, p. 126.

Article 29, Hague Convention IV, 1907, is substantially identical with section 179, Austro-Hungarian Manual, 1913.

"A spy is a person sent by one belligerent to gain secret information of the forces and defenses of the other, to be used for hostile purposes. According to practice, he may use deception under the penalty of being lawfully hanged if detected. To give this odious name and character to a confidential agent of a neutral power, bearing the commission of his country, and sent for a purpose fully warranted by the law of nations, is not only to abuse language but also to confound all just ideas, and to announce the wildest and most extravagant notions, such as certainly were not to have been expected in a grave diplomatic paper; and the President directs the undersigned to say to Mr. Hülsemann that the American Government would regard such an imputation upon it by the cabinet of Austria, as that it employed spies, and that in a quarrel none of its own, as distinctly offensive, if it did not presume, as it is willing to presume, that the word used in the original German was not of equivalent meaning with 'spy' in the English language, or that in some other way the employment of such an opprobrious term may be explained. Had the Imperial Government of Austria subjected Mr. Mann to the treatment of a spy it would have placed itself without the pale of civilized nations, and the cabinet of Vienna may be assured that if it had carried, or attempted to carry, any such lawless purpose into effect in the case of an authorized agent of this Government, the spirit of the people of this country would have demanded immediate hostilities to be waged by the utmost exertion of the power of the Republic, military and naval."

Mr. Webster, Sec. of State, to Mr. Hülsemann, Dec. 21, 1850, quoted in Moore's Digest, vol. 7, p. 234.

Attempted extension of rule.

On April 15, 1904, Count Cassini, Russian ambassador at Washington, stated, by instruction of his Government, that "in case neutral vessels, having on board correspondents who may communicate war news to the enemy by means of improved apparatus not yet provided for by existing conventions, should be arrested off the coast of Kwantung or within the zone of operations of the Russian fleet, such correspondents shall be regarded as spies and the vessels provided with wireless telegraph apparatus shall be seized as lawful prize." Mr. Hay, Secretary of State, in taking note of this declaration said that the United States did not waive any right which it might have in international law in the case of any American citizen who might be arrested or of any American vessel that might be seized.

Moore's Digest, vol. 7, pp. 233, 234; For. Rel. 1904, 729.

SPIES ENTITLED TO TRIAL.

A spy taken in the act shall not be punished without previous trial.—*Article 30, Regulations, Hague Convention IV, 1907.*[1]

With respect to Article 30 (Article 20 of Brussels) it has been remarked that in applying the penalty the requirement of a previous judgment is, in espionage as in all other cases, a guaranty that is always indispensable, and the new phrasing was adopted with the purpose of saying this more explicitly.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 146.

A spy taken in the act shall be tried and treated according to the laws in force in the army which captures him.

Art. 20, Declaration of Brussels.

No person charged with espionage shall be punished until the judicial authority shall have pronounced judgment.

Institute, 1880, p. 32.

A general rule of war allows the punishment of death to be inflicted upon spies who are found in disguise within the lines of an army. The case of Major André, painful as it was, was strictly within military usage.

Woolsey, p. 225.

It is legitimate to employ spies; but to be a spy is regarded as dishonorable, the methods of obtaining information which are used being often such that an honorable man can not employ them. A spy, if caught by the enemy, is punishable after trial by court-martial with the ignominious death of hanging; though, as M. Bluntschli properly remarks, it is only in the more dangerous cases that the right of inflicting death should be acted upon, the penalty being in general out of all proportion with the crime.

Hall, pp. 559, 560.

The severity with which spies are treated is exercised merely to prevent their employment. The motives with which a spy has acted have therefore no bearing either way upon his treatment.

Holland, p. 48.

The usual punishment for spying is hanging or shooting, but less severe punishments are, of course, admissible and sometimes inflicted. However this may be, according to article 30 of the Hague Regulations a spy may not be punished without a trial before a court-martial.

Oppenheim, vol. 2, pp. 198, 199.

[1] This article is substantially identical with article 30, Hague Convention II, 1899.

These rules [Articles 29, 30 and 31, Hague Regulations] embody the best and most humane practice, and indeed, go somewhat beyond it in insisting upon a trial of the captured spy, who has often been shot or hanged on the spot with scant ceremony.

Lawrence, p. 519.

Different kinds of spies.

The customary law on the subject of spies allows commanders to use them, and to evoke the services they render by the promise of rewards. But too often the taint of personal dishonor is held to attach itself to them indiscriminately, whereas in reality they differ from one another as coal from diamonds. This point is well brought out by a significant passage in Napier's *Peninsular War*.[2] * * * It is impossible to arrive at any reasoned conclusions unless we distinguish, as Napier does, between those who carry devotion and patriotism to the point of risking their lives in cold blood and without any of the excitement of combat, in order to obtain within the enemy's lines information of the utmost importance to their country's cause, and those who betray the secrets of their own side for the sake of a reward from its foes. The first are heroes, the second are traitors; and it is the height of injustice to visit both with the same condemnation.

Lawrence, pp. 520, 521.

Military reasons demand that the right to execute spies, if caught, should exist; but unless considerations of safety imperatively demand the infliction of the last penalty, a general should commute it into imprisonment. It should, moreover, be clearly recognized that in many cases the execution, though necessary for the safety of those who inflict it and the success of their cause, involves no more stigma than a fatal wound upon the battle-field.

Lawrence, p. 521.

The trial [of a spy] will be by court martial, and, subject to the Hague code, by the military law of the capturing army. The punishment is death.

Westlake, vol. 2, p. 90.

Spies can only be punished in pursuance of a sentence.

Art. 43, Russian Instructions, 1904.

Assisting espionage punishable.—Assisting or favoring espionage or treason and knowingly concealing a spy may be made the subject of charges; and such acts are by the customary laws of war equally punishable.

U. S. Manual, p. 65.

A spy, even when taken in the act, must not be punished without previous trial.

Edmonds and Oppenheim, art. 169.

No officer, whatever be his grade and the extent of his command, is therefore authorized to order the summary execution of persons accused of spying.

Jacomet, p. 67.

[2] Vol. IV. bk. xiv, pp. 220-221.

It is desirable that the heavy penalty which the spy incurs should be the subject not of mere suspicion but of actual proof of existence of the offense, by means of a trial, however summary (if the swift course of the war permits), and therefore the death penalty will not be enforced without being preceded by a judgment.

German War Book, p. 126.

Article 30, Hague Convention IV 1907, is substantially identical with Section 180, Austro-Hungarian Manual, 1913.

Degree of punishment.

"Article 88 of the United States 'Instructions for the Government of Armies in the Field,' promulgated April 24 1863, * * * reads: '88. A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy. The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.' Bluntschli, while embodying this rule in his tentative code, comments [Droit Int. Codifié, sec. 628] on it thus: 'The penalty should not, however, be applied except in the more dangerous cases; it would in most cases be out of all proportion with the crime. The usage has become less barbarous, and it suffices the more frequently to condemn them [spies] to close confinement or other analogous penalties.' He further says, speaking of the German military regulations of 1870, and apparently on the authority of Rolin Jaequemyns: 'The menace of death is often not avoidable, but should not however be applied except in cases where the culpability is really grave.' From these citations it may be inferred Bluntschli holds that the severity of the punishment in each particular case should depend upon the resultant danger, a test which a military tribunal may naturally be presumed to apply to the facts upon which it reaches a decision. It does not appear practicable to draw a line between the more dangerous and less dangerous cases, and our own Regulations of 1863 do not attempt it."

Mr. Gresham, Sec. of State, to Mr. Denby, min. to China, No. 1033, March 21, 1895, Moore's Digest, vol. 7, pp. 232, 233.

SPY RELIEVED OF RESPONSIBILITY BY REJOINING HIS ARMY.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage.[1]—*Article 31, Regulations, Hague Convention IV, 1907.*

It results from Article 31 (Article 21 of Brussels) that a spy not taken in the act but falling subsequently into the hands of the enemy incurs no responsibility for his previous acts *of espionage*. This special immunity is in harmony with the customs of warfare; but the words in italics have been added, on the second reading, to show clearly that this immunity has reference to acts of espionage only and does not extend to other offenses.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," pp. 146, 147.

A spy who rejoins the army to which he belongs and who is subsequently captured by the enemy is treated as a prisoner of war and incurs no responsibility for his previous acts.

Art. 21, Declaration of Brussels.

A spy who succeeds in quitting the territory occupied by the enemy incurs no responsibility for his previous acts, should he afterwards fall into the hands of that enemy.

Institute, 1880, p. 32.

A person punishable as a spy, or subject to penalties for the other reasons mentioned above (page 219), can not be tried and punished or subjected to such penalties if after doing the punishable act he has rejoined the army by which he is employed before the arrest is effected.

Hall, p. 561.

He may, of course, have incurred responsibility for acts of a different kind.

Holland, p. 48.

Spying is not criminal—that follows from Article XXXI, which relieves the spy who has regained his own army from any further liability, which he would not escape had he committed a breach of the laws of war.

Spaight, p. 204.

According to article 31 of the Hague Regulations a spy who is not captured in the act but rejoins the army to which he belongs, and is subsequently captured by the enemy, may not be punished for his

[1] This article is identical with Article 31, Regulations, Hague Convention II, 1899.

previous espionage and must be treated as a prisoner of war. But it must be specially observed that article 31 concerns only such spies as belong to the armed forces of the enemy; civilians who act as spies and are captured later may be punished. Be that as it may, no regard is paid to the status, rank, position, or motive of a spy. He may be a soldier or a civilian, an officer or a private. He may be following instructions of superiors or acting on his own initiative from patriotic motives.

Oppenheim, vol. 2, p. 199.

Civilian spy.

The offence of spying being thus cleared in the case of a soldier by its successful completion, there can be no reason for a different rule in the case of a civilian who is afterwards exposed to capture, but at Brussels there was a discussion on the point.

Westlake, p. 91.

A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, that is, after he has completed an act or attempted act of espionage, incurs no responsibility for his previous acts of espionage, and must be granted the privileges of a prisoner of war.

This immunity for previous acts does not apply to persons guilty of treason, for they may be arrested at any place or any time. And it is not necessary for traitors to be caught in the act in order that they may be punished.

Edmonds and Oppenheim, arts. 170, 171.

Article 31, Annex to Hague Convention IV, 1907, is substantially identical with section 181, Austro-Hungarian Manual, 1913.

PARLEMENTAIRE DEFINED—RIGHT TO INVIOLABILITY OF HIMSELF AND CERTAIN ASSOCIATES.

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and interpreter who may accompany him.[1]—*Article 32, Regulations, Hague Convention IV, 1907.*

Chapter III, Parlementaires (Articles 32 to 34).

The three articles composing this chapter correspond to Articles 43, 44, and 45 of the Brussels project.

The text of Article 32 differs slightly from that of Article 43. As a consequence the parlementaire may be accompanied not only by a trumpeter, bugler or drummer, and by a flag-bearer, but also by an interpreter. It is also a consequence of the new reading that he may do without one or more of these attendants and go alone carrying the white flag himself.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 147.

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag, accompanied by a trumpeter (bugler or drummer) or also by a flag-bearer. He shall have a right to inviolability as well as the trumpeter (bugler or drummer) and the flag-bearer who accompany him.

Art. 43, Declaration of Brussels.

A person is regarded as a parlementaire and has a right to inviolability who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag.

He may be accompanied by a bugler or a drummer, by a color-bearer, and, if need be, by a guide and an interpreter, who also are entitled to inviolability.

Institute, 1880, p. 32.

Communications between enemies in war have long been carried on by heralds, persons bearing flags of truce, cartels for the exchange of prisoners and other purposes, etc.

Woolsey, p. 225.

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[1] This article is substantially identical with Article 32, Regulations, Hague Convention II, 1899.

A flag of truce is used when a belligerent wishes to enter into negotiations with his enemy. The person charged with the negotiation presents himself to the latter accompanied by a drummer or a bugler and a person bearing a white flag. As belligerents have the right to decline to enter into negotiations they are not obliged to receive a flag of truce; but the persons bearing it are inviolable; they must not therefore be turned back by being fired upon, and any one who kills or wounds them intentionally is guilty of a serious infraction of the laws of war. If however they present themselves during the progress of an engagement, a belligerent is not obliged immediately to put a stop to his fire, the continuance of which may be of critical importance to him, and he can not be held responsible if they are then accidentally killed.

Hall, pp. 562, 563.

If during bombardment you see a parlementaire leave the enemy's lines it is not at all necessary to cease or relax firing in the direction whence he comes, but the parlementaire must not be intentionally fired upon. (Dossier of the General Staff of the Third Army of Japan, distributed August 8, 1904, to the troops attacking Port Arthur.)

Ariga, p. 274.

The bearer of a flag of truce will, of course, enjoy the privileges of such, although he may come unaccompanied.

Holland, p. 48.

The parlementaire, or person coming to hold parley with the enemy under a flag of truce, is granted inviolability under Article XXXII as well as the persons who necessarily accompany him—the trumpeter, drummer or bugler (to attract the enemy's attention), the flag-bearer and the interpreter; presumably also a guide, were the employment of one necessary, would be inviolable, and so too would be the parlementaire's horse-holder.

Spaight, p. 216.

De Martens is, for once, in error when he states a *parlementaire* is not inviolable unless he is accompanied by "the traditional bugler." "The white flag," he says, "is not sufficient to ensure the privileges of a *parlementaire* to any military man who approaches the enemy's out-posts." There is no warrant for this view either in usage or convention. The usual procedure is, however, for the *parlementaire* to come accompanied by some or all of the persons mentioned in Article XXXII.

Spaight, p. 217; De Martens, p. 411.

Since time immemorial a white flag has been used as a symbol by an armed force wishing to negotiate with the enemy, and always and everywhere it has been considered a duty of the enemy to respect this symbol. In land warfare the flag of truce is made use of in the following manner. An individual—soldier or civilian—charged by his force with the task of negotiating with the enemy, approaches the latter either carrying the flag himself, or accompanied by a flag-bearer and, often, also by a drummer, a bugler, or a

trumpeter, and an interpreter. In sea warfare the individual charged with the task of negotiating approaches the enemy in a boat flying the white flag. The Hague Regulations have now by articles 32 to 34 enacted most of the customary rules of International Law regarding flags of truce without adding any new rule.

Oppenheim, vol. 2, p. 278.

Bearers of flags of truce and their parties, when admitted by the other side, must be granted the privilege of inviolability. They may neither be attacked nor taken prisoners, and they must be allowed to return safely in due time to their own lines.

Oppenheim, vol. 2, p. 279.

Bearers of white flags and their party, who approach the enemy and are received, must carry some authorisation with them to show that they are charged with the task of entering into negotiations (article 32), otherwise they may be detained as prisoners, since it is his mission and not the white flag itself which protects the flag-bearer. This mission protects every one who is charged with it, notwithstanding his position in his corps and his status as a civilian or a soldier, but it does not protect a deserter. The latter may be detained, court-martialed, and punished, notice being given to his principal of the reason of punishment.

Oppenheim, vol. 2, p. 280, 281.

[Flags of truce] are used by one side as a signal that it desires a parley with the other, or as a sign of surrender. The Hague code for war on land declares that "a person is considered as the bearer of a flag of truce who has been authorized by one of the belligerents to enter into communication with the other and who presents himself with a white flag." It adds that he may be accompanied by a trumpeter, a bugler, or drummer, a flag bearer, and an interpreter. The party enjoys "the right of inviolability," that is to say, its members may not be subjected to personal injury or detained as prisoners. It goes without saying that the bearer of a flag of truce is entitled to this immunity if he comes without attendants.

Lawrence, p. 557.

The parlementaire advances towards the enemy accompanied by a drummer or a trumpeter, by a soldier carrying a white fanion, and, if necessary, by a guide or by an interpreter.

Bonfils, p. 865.

The bearer of a flag of truce is to be respected and protected by each belligerent, so far as possible, in coming and going, without suspending hostilities, but can not insist on being admitted; and if admitted during an engagement, may be detained till the engagement is over.

Field, p. 509.

Every person who is authorized by one of the belligerents to carry a white flag and to enter into communication with the other belligerent, is considered a bearer of a flag of truce.

The bearer of a flag of truce, and his suite are inviolable, namely: (a) the trumpeter; (b) the drummer, bugler; (c) the interpreter.

Art. 37, Russian Instructions, 1904.

The act of raising a white flag during a battle should not stop the military operations, but the bearer of the white flag and his suite should not be fired upon. When the bearer of a flag of truce approaches our fighting lines, he must be directed to the chief to whom he is sent or to a superior commander. It is only when the enemy's troops lay down their arms or fulfill the conditions stipulated for that the battle shall cease.

Art. 41, Russian Instructions, 1904.

The adoption of the word "parlementaire" to designate and distinguish the agent or envoy seems absolutely essential in order to avoid confusion and because all other nations, including Great Britain, utilize the word. In the past this word has been translated at times to mean the agent or envoy only, at other times the agent and emblem, or both. To call the parlementaire "the bearer of a flag of truce" is not in reality correct, because he seldom, if ever, actually carries it.

U. S. Manual, p. 72.

The fire should not be intentionally directed on the person carrying the flag or upon those with him; if, however, the parlementaire or those near him present themselves during an engagement and are killed or wounded, it furnishes no ground for complaint. It is the duty of the parlementaire to select a propitious moment for displaying his flag, such as during the intervals of active operations, and to avoid the dangerous zone by making a detour.

The parlementaire, in addition to presenting himself under cover of a white flag, must be duly authorized in a written instrument signed by the commander of the forces.

* * * * * * *

Only three persons are authorized to accompany the parlementaire. These, under the rule, are entitled to the same immunity. In case he is to have more than these, authority for the same should be previously obtained. He may be accompanied by a less number, and may even go alone with the flag of truce. It is advisable to have at least a trumpeter, bugler, or drummer with him in order to more readily and surely make known his status, thereby avoiding danger as much as possible.

U. S. Manual, pp. 73, 74.

It has been thought desirable to adopt this word, for which the ancient verb "to parley" would seem good authority, from the Hague Rules; it is current in all other armies in addition to an expression for "flag of truce." The use of the latter term by British manuals in the past to mean indifferently both the envoy and the emblem, and sometimes to mean only the envoy, and at other times the envoy and his attendants, has given rise to some confusion. The use of the expression "bearer of a flag of truce" to signify the principal agent, is also misleading, as he is seldom the actual bearer of the flag.

Edmonds and Oppenheim, art. 51.

Whilst in the performance of their duties, provided their conduct is correct, they [parlementaires] are entitled to complete inviolability.

The number of persons who may accompany the parlementaire to the enemy's lines, unless special authorization for additional ones is given, is limited to three: a trumpeter, bugler, or drummer, a flag-bearer, and an interpreter. These are entitled to the same inviolability as the envoy himself.

The parlementaire may, however, come alone, carrying the white flag himself. It is, however, advisable that he should at least have a trumpeter or bugler with him, for otherwise his character might not be understood quickly enough to prevent danger to himself.[1]

Edmonds and Oppenheim, arts. 226, 237, 238.

According to the Hague Rules, a person to be regarded as a parlementaire must be authorized by one of the belligerents to enter into communication with the other and must present himself under cover of a white flag.

Edmonds and Oppenheim, art. 228.

Since a certain degree of intercourse between the two belligerents is unavoidable, and indeed desirable, the assurance of this intercourse is in the interests of both parties; it has held good as a custom from the earliest times, and even among uncivilized people, whereby these envoys and their assistants (trumpeter, drummer, interpreter, and orderly) are to be regarded as inviolable; a custom which proceeds on the presumption that these persons, although drawn from the ranks of the combatants, are no longer, during the performance of these duties, to be regarded as active belligerents. They must, therefore, neither be shot nor captured; on the contrary, everything must be done to assure the performance of their task and to permit their return on its conclusion.

German War Book, p. 117.

Article 32, Annex to Hague Convention IV, 1907, is substantially identical with section 182, Austro-Hungarian Manual, 1913.

A report having been received in Washington that President Balmaceda, of Chile, had threatened to shoot envoys of the Congressional party if they should be found within his jurisdiction, the American minister at Santiago was instructed by telegraph, May 14, 1891, that, if they should come within such jurisdiction, relying on an offer of mediation or on an invitation of the mediators (of whom the American minister was one), he would "insist that under any circumstances they should have ordinary treatment of flag of truce."

Moore's Digest, vol. 7, p. 319; For. Rel. 1891, 123.

[1] *Kriegsbrauch* (p. 26) adds "horse-holders" to the persons already named who may accompany the parlementaire, but there is no authority for this, nor for granting them inviolability. The party should be strictly limited to the numbers allowed by the Hague rules, unless special authorization is given. [*Edmonds and Oppenheim*, p. 53.]

RIGHTS OF COMMANDER RESPECTING PARLEMENTAIRE.

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all the necessary steps to prevent the parlementaire taking advantage of his mission to obtain information.

In case of abuse, he has the right to detain the parlementaire temporarily.[1]—*Article 33, Regulations, Hague Convention IV, 1907.*

Article 33, with the exception of some changes in form adopted on the first and second readings, is the same as the first two paragraphs of the Brussels Article 44. It deals with the right that every belligerent has either to refuse to receive a parlementaire, or to take the measures necessary in order to prevent him from profiting by his mission to get information, or finally to detain him in case of abuse. All these rules conform to the necessities and customs of war.

The Brussels Article 44 contained a final paragraph permitting a belligerent to declare 'that he will not receive parlementaires during a certain period,' and adding that 'parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability.' The loss of inviolability is certainly an extreme penalty; but this special point has no longer any interest, for this provision is omitted in the new draft. It appears from the discussion which took place at the meeting of May 30, and especially from the remarks made on this article by the first delegate of Italy, His Excellency Count Nigra, that according to the views of the subcommission, the principles of the law of nations do not permit a belligerent ever to declare, even for a limited time, that he will not receive flags of truce. At the Brussels Conference in 1874, moreover, this provision was debated at length and was only finally accepted to satisfy the German delegate, General von Voigts-Rhetz. The technical delegates at the Hague Conference, and conspicuously the German delegate, Colonel Gross von Schwarzhoff, have on the contrary seemed to consider that the necessities of warfare are sufficiently regarded in the option that every military commander has of not receiving a flag of truce in all circumstances (first paragraph of Article 33). They accordingly voted with the entire subcommission for the abrogation of the last paragraph of former Article 44.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 147.

The commander to whom a parlementaire is sent is not in all cases and under all conditions obliged to receive him.

It is lawful for him to take all the necessary steps to prevent the parlementaire taking advantage of his stay within the radius of the

[1] This article is substantially identical with Article 33, Regulations, Hague Convention II, 1899.

enemy's position to the prejudice of the latter, and if the parlementaire has rendered himself guilty of such an abuse of confidence, he has the right to detain him temporarily.

He may likewise declare beforehand that he will not receive parlementaires during a certain period. Parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability.

Art. 44, Declaration of Brussels.

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

The commander who receives a parlementaire has a right to take all the necessary steps to prevent the presence of the enemy within his lines from being prejudicial to him.

Institute, 1880, p. 32.

As flags of truce are sometimes sent from the enemy to forces in position, or on the march, or in action, nominally for making some convention, as for a suspension of arms, but really with the design of gaining information, it is proper that restrictions should be placed upon its use. Thus, if sent to an army in position, the bearer of said flag should never be allowed to pass the outer line of sentinels nor even to approach within the range of their guns, without permission. If warned away, and he should not instantly depart, he may be fired on. Similar precautions may be taken by an army on the march. If the flag proceeds from the enemy's lines during a battle, the ranks which it leaves must halt and cease their fire. When the bearer displays his flag, he will be signalled by the opposing force, either to advance, or to retire; if the former, the forces he approaches will cease firing; if the latter, he must instantly retire; for, if he should not, he may be fired upon.

Halleck, p. 674.

A belligerent may decline to receive a flag of truce, or to hold any intercourse with the enemy, or may even fire upon those who persist in attempting to open such intercourse after being warned off, but the bitterness of war rarely reaches this point.

Woolsey, p. 225.

If the enemy receives persons under the protection of a flag of truce he engages by implication to suspend his war with respect to them for so long as the negotiation lasts; he can not therefore make them prisoners and must afford them the means of returning safely within their own lines; but a temporary detention is permissible if they are likely to be able to carry back information of importance to their army. Effectual precautions may always be taken to hinder the acquisition of such knowledge; bearers of flags of truce may for example be blindfolded, or be prevented from holding communication with other persons than those designated for the purpose of having intercourse with them.

Hall, p. 563.

A commander may, for instance, refuse to receive a flag of truce, or may direct the bearer to be blindfolded, if he is executing a secret movement. He may also, under certain circumstances, declare beforehand that a flag of truce cannot be received.

Holland, p. 49.

Blindfolding of parlementaires.

The blindfolding of *parlementaires* is a common expedient to prevent their picking up information in the enemy's camp; it is prescribed by the French official *Service des Armées en Campagne* (Article 41) by the German *Field Service Regulations* (paragraph 235), and by the British *Field Service Regulations*, which lay down (section 94 (3) that—

The bearer of a flag of truce, also the trumpeter, bugler, or drummer, the flag-bearer, and the interpreter may be blindfolded.

Spaight, p. 217.

A provision similar to this last one [*Lieber*, 113] is to be found in the original draft for the Brussels Conference, which reads—

"If the bearer of a flag of truce presents himself in the enemy's lines during a battle and is wounded or killed, it shall not be considered as a violation of law."

The words "by accident" were inserted after the word "killed" in committee, but the whole article was suppressed eventually as being likely to give rise to recriminations, owing to the practical impossibility of proving whether the killing was accidental or not. It was felt, no doubt, that although the article represented existing usage, no useful end would be served by drawing attention, in a diplomatic document, to what is an inevitable mischance of hostilities, like the fortuitous killing of a woman or child. To fire on an envoy deliberately and without warning would be a breach of war law, but if, having presented himself and having been signalled or warned to retire, he persists in advancing, then military necessity would justify his being shot at. If a commander has the right to refuse admission to an envoy, he must have the right to take adequate steps to prevent the man's forcing admission—perhaps just at the critical stage of some important secret operation.

Spaight, p. 221; Brussels B. B., p. 175.

As a commander of an armed force is not, according to article 33 of the Hague Regulations, compelled to receive a bearer of a flag of truce, a flag-bearer who makes his appearance may at once be signalled to withdraw. Yet even then he is inviolable from the time he displays the flag to the end of the time necessary for withdrawal. During this time he may neither be intentionally attacked nor made prisoner. However, an armed force in battle is not obliged to stop its military operations on account of the approach of an enemy flag-bearer who has been signalled to withdraw. Although the latter may not be fired upon intentionally, should he be wounded or killed accidentally, during the battle, no responsibility or moral blame would rest upon the belligerent concerned. In former times the commander of an armed force could inform the enemy that, within a certain defined or indefinite period, he would under no circumstances or conditions receive a flag-bearer; if, in spite of such notice, a flag-bearer approached, he did not enjoy any privilege, and he could be attacked and made prisoner like any other member of the enemy forces. But this rule is now obsolete, and its place is taken by the rule that a commander must never, except in a case of reprisals, declare beforehand, even only for a specified period, that he will not receive a bearer of a flag of truce.

Oppenheim, vol. 2, p. 279.

The forces admitting enemy flag-bearers need not allow them to acquire information about the receiving forces and to carry it back to their own corps. Flag-bearers and their parties may, therefore, be blindfolded by the receiving forces, or be conducted by round-about ways, or be prevented from entering into communication with individuals other than those who confer officially with them, and they may even temporarily be prevented from returning till a certain military operation of which they have obtained information is carried out. Article 33 of the Hague Regulations specifically enacts that a commander to whom a flag of truce is sent "may take all steps necessary to prevent the envoy taking advantage of his mission to obtain information." Bearers of flags of truce are not, however, prevented from reporting to their corps any information they have gained by observation in passing through the enemy lines and in communicating with enemy individuals. But they are not allowed to sketch maps of defences and positions, to gather information secretly and surreptitiously, to provoke or to commit treacherous acts, and the like. If nevertheless they do any of these acts, they may be court-martialed. Articles 33 and 34 of the Hague Regulations specifically enact that a flag-bearer may temporarily be detained in case he abuses his mission for the purpose of obtaining information, and that he loses all privileges of inviolability "if it is proved beyond doubt that he has taken advantage of his privileged position to provoke or commit an act of treachery."

Oppenheim, vol. 2, p. 280.

Possible abuse.

Abuse of his mission by an authorized flag-bearer must be distinguished from an abuse of the flag of truce itself. Such abuse is possible in two different forms:—

(1) The force which sends an authorized flag-bearer to the enemy has to take up a corresponding attitude; the ranks which the flag-bearer leaves being obliged to halt and to cease fire. Now it constitutes an abuse of the flag of truce if such attitude corresponding with the sending of a flag of truce is intentionally not taken up by the sending force. The case is even worse when a flag-bearer is intentionally sent on a feigned mission in order that military operations may be carried out by the sender under the protection due from the enemy to the flag-bearer and his party.

(2) The second form of a possible abuse appears in the case in which a white flag is made use of for the purpose of making the enemy believe that a flag of truce is about to be sent, although it is not sent, and of carrying out operations under the protection granted by the enemy to this pretended flag of truce.

It need hardly be specially mentioned that both forms of abuse are gross perfidy and may be met with reprisals, or with punishment of the offenders in case they fall into the hands of the enemy.

Oppenheim, vol. 2, p. 281.

Instance of abuse.

The following example on abuse of a flag of truce is quoted by Oppenheim from Baker's Halleck, vol. 2, p. 315:—

"On July 12, 1882, while the British fleet was lying off Alexandria, in support of the authority of the Khedive of Egypt, and the rebels

under Arabi Pasha were being driven to great straits, a rebel boat, carrying a white flag of truce, was observed approaching H. M. S. *Invincible* from the harbour, whereupon H. M. ships *Temeraire* and *Inflexible*, which had just commenced firing, were ordered to suspend fire. So soon as the firing ceased, the boat, instead of going to the *Invincible*, returned to the harbour. A flag of truce was simultaneously hoisted by the rebels on the Ras-el-Tin fort. These deceits gave the rebels time to leave the works and to retire through the town, abandoning the forts, and withdrawing the whole of their garrison under the flag of truce."

Oppenheim, vol. 2, p. 282.

Commanders of forces engaged in hostilities frequently lodge complaints with each other regarding single acts of illegitimate warfare committed by members of their forces, such as abuses of the flag of truce, violations of such flag or of the Geneva Convention, and the like. The complaint is sent to the enemy under the protection of a flag of truce, and the interest which every commander takes in the legitimate behaviour of his troops will always make him attend to complaints and punish the offenders, provided the complaints concerned are found to be justified. Very often, however, it is impossible to verify the statements in the complaint, and then certain assertions by one party, and their denial by the other, face each other without there being any way of solving the difficulty.

Oppenheim, vol. 2, p. 302.

But the obligation to refrain from molestation is not absolute. In the first place, the commander to whom a flag of truce is sent is not bound to receive it. Custom prescribes that he must notify his refusal, and gives him the right to fire on the flag party if they continue to advance in spite of his notification. Further, in cases where there is no question of exclusion, the emissary or emissaries may be blindfolded, and they are held bound in honor not to take advantage of their position for the purpose of obtaining military information, whether or no physical means are used to hinder them. If important movements are on foot, and it is impossible that they should have failed to acquire some knowledge of them by the evidence of their own senses, they may be kept in honorable detention for a little while, till the operations are over, or till it is no longer necessary to keep them secret.

Lawrence, p. 557.

A permission to declare that flags of truce will not be received during a certain time was omitted at The Hague from Brussels 44, the permission not to receive the flag of truce being regarded as sufficient.

Westlake, vol. 2, p. 91.

The commander to whom the bearer of a flag of truce is sent shall decide whether to receive him or not.

All necessary measures may be taken to prevent the bearer of a flag of truce from taking advantage of his mission to obtain information.

If it be observed that the bearer of a flag of truce is guilty of such abuse, he may be detained provisionally.

Arts. 38 and 39, Russian Instructions, 1904.

The commander to whom a parlementaire is sent is not obliged in every case to receive him. There may be a movement in progress the success of which depends on secrecy, or it may, owing to the state of the defences, be undesirable to allow an envoy to approach a besieged locality. In direct contrast, however, to a former rule it is now no longer permissible—except in case of reprisals for abuses of the flag of truce—for a belligerent to declare beforehand, even for a specified period, that he will not receive parlementaires.

It is permissible for a commander to declare subject to what formalities and conditions he will receive a parlementaire and to fix the hour and place at which he should appear.

An unnecessary repetition of visits need not be allowed.

The greatest courtesy should be observed on both sides. If there is any conversation, the subject of the military situation should not be touched on, and great care taken to avoid giving or asking for information. A parlementaire is not, however, forbidden to see and afterwards to report what his enemy does not hide.

All measures necessary to prevent the parlementaire from taking advantage of his mission to obtain information are allowable. Care should be taken that he and his party are prevented from communicating with anyone except the persons nominated to receive them. If permission is given for the parlementaire to enter the lines for the purpose of negotiation, or if the officer of the piquet or post, or any superior officer, thinks it desirable for any special reason to send him to the rear, he may, and invariably should, be blindfolded, and be taken to the destination by a circuitous route.

A commander has by the Hague rules the right of detaining a parlementaire temporarily if the latter abuses his position. In addition, a commander has, by a customary rule of International Law, the right to retain a parlementaire so long as circumstances require, if the latter has seen anything knowledge of which might have ill consequences to the other army, or if his departure would have coincided with movements of troops whose destination or employment he might guess.

Edmonds and Oppenheim, arts. 234–236, 245, 248, 250.

He is not obliged, for example, to receive him during an engagement.

An absolute and unlimited refusal to receive parlementaires would of itself be rightfully considered as a violation of the laws of war. * * *

He has likewise this right in case military necessity requires it, for example, if the parlementaire had surprised an important movement.

Jacomet, pp. 85, 86.

Article 33, Annex to Hague Convention IV, 1907, is substantially identical with section 183, Austro-Hungarian Manual, 1913.

PARLEMENTAIRE, HOW HE MAY LOSE HIS RIGHT OF INVIOLABILITY.

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.[1]—*Article 34, Regulations, Hague Convention IV, 1907.*

Article 34 is identical with Article 45 of Brussels. It provides that 'the parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason'. This provision elicited no remarks as to its substance. It was merely asked how a parlementaire could *commit* an act of treason *against the enemy*. The text was nevertheless retained in view of certain systems of penal legislation which regard the instigator of an offence as a principal.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 147.

If a parlementaire abuse the trust reposed in him he may be temporarily detained, and, if it be proved that he has taken advantage of his privileged position to abet a treasonable act, he forfeits his right to inviolability.

Institute, 1880, p. 33.

In the Instructions to the United States Armies of April 24, 1863, sec. 14, it is declared that, if "it be discovered and fairly proved that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy;" yet great caution is enjoined in convictions of that description, on account of the great utility of flags of truce, and the good faith to be observed towards, as well as by, their bearers.

Dana's Wheaton, p. 430, note 167.

It is a necessary consequence of the obligation to conduct the non-hostile intercourse of war with good faith, that a belligerent may not make use of a flag of truce in order to obtain military information; and though its bearer is not expected to refrain from reporting whatever he may learn without effort on his own part, any attempt to acquire knowledge surreptitiously exposes him to be treated as a spy. Deserters, whether bearing or in attendance upon a flag of truce, are not protected by it; they may be seized and executed, notice being given to the enemy of the reason of their execution.

Hall, p. 563.

[1] This article is substantially identical with Article 34, Regulations, Hague Convention II, 1899.

Meaning of "treason."

"Trahison" in the original, i. e. "treason", an offence of which, in strictness, an enemy cannot be guilty. "Trahison," and its German equivalent "Verrath", or more specifically "Kriegsverrath", are, however, habitually employed in a much wider sense, as applicable to any acts on the part of inhabitants of invaded territory which are calculated either to deceive the invader, or to inform their own side of his forces and movements. See, e. g., the French *Code de Justice militaire,* and the *Kriegsbrauch* of the Prussian General Staff, p. 50.

Holland, p. 49.

It is for the commander who receives the flag of truce to ensure that the bearer gains no information, whether by sight or speech, and if he fails to take the requisite precautions, it is palpably unjust to treat the envoy's offence, for which his (the commander's) contributory negligence is partly to blame, as the very grave offence of spying. Article 34 is authority for the punishment of a *parlementaire* who "instigates or commits an act of treachery," and under "treachery" would no doubt be reckoned some such act as obtaining military plans or documents from some accomplice in the enemy's lines, instigated to his treasonable act by the *parlementaire.* Such a case as this would seem properly punishable as espionage, for the spy is not the less guilty because the enemy soldier is guilty too. Similarly a *parlementaire* who sketches defences, in the improbable case of his being able to bribe the soldiers told off to keep watch over him to allow him to do so, would seem to be a spy within the meaning of the term. The original draft of the article which came before the Brussels Conference stated that a *parlementaire* lost inviolability if proved to have abused his privileged position *"to collect information* or to incite to treachery," but the words in italics were omitted on the ground that the provision was already embodied in the article dealing with spies (Article 29). The Hague Conferences were silent on the subject and there is some uncertainty as to whether a *parlementaire* who manages to obtain some military information either by looking about him or by asking the enemy soldiers is to be considered a spy or not. It is much to be desired that the next Hague Conference should make the matter quite clear. The protocol of the Brussels Conference—the commentary on an article which is now Conventional war law—and the last line of Article 33 are hardly consistent. Under the former, the parlementaire who "collects information" (*recueillir des renseignements* is a spy and liable to be tried and shot or hanged; under the latter, he is only liable to be temporarily detained if he abuses his position "to obtain information" (*pour se renseigner*). Of course the *parlementaire* who commits a treacherous overt act—if, for instance, by making a sudden attempt, he kills the enemy commander, or puts the finishing touch to a previously concerted plan of blowing up the enemy's magazine—clearly forfeits his claim to inviolability. Such treacherous acts are immediately damaging in their effects, and a special provision is no doubt required to deter a desperate man from abusing his privileged position to carry them out. But spying, or *quasi*-spying, stands on a different footing. Here the detention of the envoy would prevent any ill result following from the abuse of the

flag of truce, and this consideration, together with the fact already referred to, that it is the duty of the belligerent receiving the flag of truce to prevent any possibility of its being abused, makes one incline to the view that in none but the very extremest cases (if he purchases plans, say, or sketches defences) ought a *parlementaire* to be regarded as a spy.

Spaight, pp. 219, 220; Brussels B. B., pp. 175, 208.

In the second place, anything approaching to treachery on the part of the bearer of a flag of truce deprives him of his personal inviolability. If he purchases plans, or incites soldiers to desertion, or attempts to sketch defences, he may be deprived of liberty, or perhaps, in extreme cases, executed as a spy.

Lawrence, p. 558.

The bearer of a flag of truce loses the right of personal inviolability if it be proven that he has taken advantage of his privileged position to provoke treachery.

Art. 40, Russian Instructions, 1904.

The original French word used is "trahisen," in the Hague rule. It was translated "treachery," probably because a parlementaire can not, strictly speaking, be guilty of treason.

U. S. Manual, p. 75.

He [the parlementaire] is then treated as a spy. In this case, it is necessary to bring to the knowledge of the hostile army the measures of severity taken with regard to him and the reasons upon which they are based.

Jacomet, p. 86.

A parlementaire loses his right of inviolability if it is proved in a positive and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason. He can then be put on his trial.

Edmonds and Oppenheim, art. 251.

Although a parlementaire cannot in strictness commit an act of treason as regards the enemy, the word treason has been maintained in the Hague Rules because in some penal codes the instigator of an act of treason is considered an accessory. (Hague Conference, 1899, p. 147.) In the translation of art. 34 of the Hague Rules, *trahison* is, in error, rendered "treachery," not "treason."

Edmonds and Oppenheim, p. 55.

Of course any contravention of the last two conditions puts an end to his [the parlementaire's] inviolability; it may justify his immediate capture, and in extreme cases (espionage, hatching of plots), his condemnation by military law.

German War Book, p. 118.

Article 34, Annex to Hague Conference IV, 1907, is substantially identical with section 184, Austro-Hungarian Manual, 1913.

CAPITULATIONS.

Capitulations agreed upon between the contracting parties must take into account the rules of military honor. Once settled, they must be scrupulously observed by both parties.[1]—*Article 35, Regulations, Hague Convention IV, 1907.*

Chapter IV, Capitulations (Article 35).

The sole article of this chapter is, with a few changes in wording, like Article 46 of the Brussels project.

The clause according to which 'capitulations can never include conditions contrary to honor or military duty,' proposed at Brussels by the French delegate, General Arnaudeau, and inserted almost literally in Article 46, has been retained in principle.

The wording of the new Article 35, as adopted by the subcommission, gives even a more imperative form to this principle by saying that the capitulations 'must take into account the rules of military honour.'

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

The conditions of capitulations are discussed between the contracting parties.

They must not be contrary to military honour.

Once settled by a convention, they must be scrupulously observed by both parties.

Art. 46, Declaration of Brussels.

Military conventions made between belligerents during the continuance of war, such as armistices and capitulations, must be scrupulously observed and respected.

Institute, 1880, p. 29.

Definition.

Capitulations are agreements entered into by a commanding officer for the surrender of his army, or by the governor of a town, or a fortress, or particular district of country, to surrender it into the hands of the enemy.

Halleck, p. 660.

Stipulations.

Capitulations usually contain stipulations with respect to the inhabitants of the place which is surrendered, the security of their religion, property, privileges and franchises, and also with respect to the troops or garrison, either allowing them to march out with their

[1] This article is substantially identical with Article 35, Regulations, Hague Convention II, 1899.

arms and baggage, with the honours of war, or requiring them to lay down their arms and surrender as prisoners of war. The general phrase "with all the honours of war," is usually construed to include the right to march with colours displayed, drums beating, etc. It is proper, however, that such matters should be precisely stated in the articles of capitulation.

Halleck, p. 660.

Authority to make capitulations.

The authority to make capitulations falls within the scope of the general powers of the chief commander of the military or naval forces, or of the town, fortress, or district of country included in the capitulation. The power of the general or admiral to enter into an ordinary capitulation, the same as in the case of a truce, is necessarily implied in his office. So, of the chief officer of a town, fortress, or district of country. "The governor of a town," says Rutherforth, "is the commander of the garrison, that is, of an army employed for the particular purpose of defending the town. The nature, therefore, of his trust implies that his compacts about surrendering the town will bind himself and the garrison. If he surrenders it when he might have defended it, or upon worse terms then he might have made, he is accountable to his own state for his misconduct; but the abuse of his power does not affect any compact which he makes, in consequence of that power." But if unusual and extraordinary stipulations are inserted in the capitulation which are not within the ordinary and implied powers of the officer making it, they are not binding either upon the state or upon the troops. or example, if the general should stipulate that his troops shall never bear arms against the same enemy, or, if the governor of a place should agree to cede it to the enemy as a conquest, such agreements, not coming within his implied powers, would be null and void, unless special authority to that effect had been given to him, or his acts should subsequently receive the sanction of his government.

Halleck, p. 660; Rutherforth, *Institutes*, b. 2, ch. 9, sec. 21.

Authority of commanders.

Capitulations for the surrender of troops, fortresses, and partucilar districts of country, fall naturally within the scope of the general powers intrusted to military and naval commanders. Stipulations between the governor of a besieged place, and the general or admiral commanding the forces by which it is invested, if necessarily connected with the surrender, do not require the subsequent sanction of their respective sovereigns. Such are the usual stipulations for the security of the religion and privileges of the inhabitants, that the garrison shall not bear arms against the conquerors for a limited period, and other like clauses properly incident to the particular nature of the transaction. But if the commander of the fortified town undertake to stipulate for the perpetual cession of that place, or enter into other engagements not fairly within the scope of his implied authority, his promise amounts to a mere *sponsion*.

Dana's Wheaton, pp. 499, 500.

The convention concluded at Closter-Seven, during the seven years' war, between the Duke of Cumberland, commander of the British forces in Hanover, and Marshal Richelieu, commanding the French army, for a suspension of arms in the north of Germany, is one of the most remarkable treaties of this kind recorded in modern history. It does not appear, from the discussions which took place between the two governments on this occasion, that there was any disagreement between them as to the true principles of international law applicable to such transactions. The conduct, if not the language of both parties, implies a mutual admission that the convention was of a nature to require ratification, as exceeding the ordinary powers of military commanders in respect to mere military capitulations. The same remark may be applied to the convention signed at El Arish, in 1800, for the evacuation of Egypt by the French army; although the position of the two governments, as to the convention of Closter-Seven, was reversed in that of El Arish, the British government refusing in the first instance to permit the execution of the latter treaty upon the ground of the defect in Sir Sidney Smith's powers, and, after the battle of Heliopolis, insisting upon its being performed by the French, when circumstances had varied and rendered its execution no longer consistent with their policy and interest. Good faith may have characterized the conduct of the British government in this instance, as was strenuously insisted by ministers in the parliamentary discussions to which the treaty gave rise, but there is at least no evidence of perfidy on the part of General Kleber. His conduct may rather be compared with that of the Duke of Cumberland at Closter-Seven, (and it certainly will not suffer by the comparison,) in concluding a convention suited to existing circumstances, which it was plainly his interest to carry into effect when it was signed, and afterwards refusing to abide by it when those circumstances were materially changed. In these compacts, time is material: indeed it may be said to be of the very essence of the contract. If any thing occurs to render its immediate execution impracticable, it becomes of no effect, or at least is subject to be varied by fresh negotiation.

Dana's Wheaton, pp. 500, 501.

Capitulations formerly were often made on the condition of not being relieved by a certain day. They are usually formal agreements in writing between the officers in command on both sides, who, unless the power is taken from them with the knowledge of the other party, are empowered to make all such arrangements.

Woolsey, p. 255.

Authority of commanders.

In so far as capitulations are agreements of a strictly military kind, officers in superior or detached command are as a general rule competent to enter into them. But stipulations affecting the political constitution or administration of a country or place, or making engagements with respect to its future independence, cannot be consented to even by an officer commanding in chief without the possession of special powers; and a subordinate commander cannot grant terms without reference to superior authority, under which the enemy gains any advantage more solid than permission to surrender with forms of honour.

Hall, p. 573.

Sponsion.

A capitulation is an agreement for the surrender of troops or places.

A capitulation clearly in excess of the implied authority of the officer by whom it is made, when it is technically described as a mere "sponsion," as, for instance, that his troops shall never serve again against the same enemy, may be repudiated by his Government.

It is an implied condition, in the capitulation of a place, that the capitulating force shall not destroy its fortifications or stores, after the conclusion of the agreement.

Holland, p. 49.

Non-destruction of property.

The capitulation once signed, the terms of the contract must be strictly observed. "So soon as a capitulation is signed," says paragraph 146 of the *American Instructions*, "the capitulator has no right to demolish, destroy or injure the works, arms, stores or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same." Sometimes a clause to this effect is inserted in the conditions but it is unnecessary, being implied in the contract. "It is an implied condition in the capitulation of a place that the capitulating force shall not destroy its fortifications or stores after the conclusion of the agreement."

Spaight, p. 250; Holland, *Laws and Customs of War*, note to Article XXXV.

Conditions before and after signing.

A commander who has brought a fortress to the point of capitulating may make the non-destruction of property during the negotiations a condition for granting better terms, and it may suit the besieged's interests to meet him in the matter. In the absence of such a special arrangement, the commandant has a perfect right to dispose as he chooses of his *matériel* up to the moment of the signing of the act of capitulation. * * *

The same principles which apply to the *matériel* of a fortress which has capitulated are applicable also in the case of the *personnel*. Once the capitulation is signed, the position is stereotyped and fixed; the *status quo* of the moment of signature must be honourably maintained. The victorious belligerent is justified in expecting that not only the *matériel* but the *personnel* of the capitulating force shall be handed over to him in accordance with the terms of the convention.

Spaight, pp. 251, 253.

Limitations.

Capitulations are conventions between armed forces of belligerents stipulating the terms of surrender of fortresses and other defended places, or of men-of-war, or of troops. It is, therefore, necessary to distinguish between a *simple* and a *stipulated* surrender. If one or more soldiers lay down their arms and surrender, or if a fortress or a man-of-war surrenders without making any terms whatever, there is no capitulation, for capitulation is a convention stipulating the terms of surrender.

Capitulations are military conventions only and exclusively; they must not, therefore, contain arrangements other than those of a

local and military character concerning the surrendering forces, places, or ships. If they do contain such arrangements, the latter are not valid, unless they are ratified by the political authorities of both belligerents. The surrender of a certain place or force may, of course, be arranged by some convention containing other than military stipulations, but then such surrender would not originate from a capitulation. And just as is their character, so the purpose of capitulations is merely military—namely, the abandonment of a hopeless struggle and resistance which would only involve useless loss of life on the part of a hopelessly beset force. Therefore, whatever may be the indirect consequences of a certain capitulation, its direct consequences have nothing to do with the war at large, but are local only and concern the surrendering force exclusively.

Oppenheim, vol. 2, p. 284, 285.

Conditions before and after signing.

If special conditions are not agreed upon in a capitulation, it is concluded under the obvious condition that the surrendering force become prisoners of war, and that all war material and other public property in their possession or within the surrendering place or ship are surrendered in the condition they were at the time when the signature was given to the capitulation. Nothing prevents a force fearing surrender from destroying their provisions, munitions, their arms and other instruments of war which, when falling into the hands of the enemy, would be useful to him. Again, nothing prevents a commander, even after negotiations regarding surrender have begun, from destroying such articles. But when once a capitulation has been signed, such destruction is no longer lawful, and, if carried out, constitutes perfidy which may be punished by the other party as a war crime.

But special conditions may be agreed upon between the forces concerned, and they must then be faithfully adhered to by both parties. The only rule which article 35 of the Hague Regulations enacts regarding capitulations is that the latter must be in accordance with the demands of military honour, and that, when once settled, they must be scrupulously observed.

Oppenheim, vol. 2, pp. 285, 286.

Possible terms.

It is instructive to give some instances of possible conditions:—A condition of a capitulation may be the provision that the convention shall be valid only if within a certain period relief troops are not approaching. Provision may, further, be made that the surrendering forces shall not in every detail be treated like ordinary prisoners of war. Thus it may be stipulated that the officers or even the soldiers shall be released on parole, that officers remaining prisoners shall retain their swords. Whether or not a belligerent will grant or even offer such specially favourable conditions depends upon the importance of the force, place, or ship to be surrendered, and upon the bravery of the surrendering force. There are even instances of capitulations which stipulated that the surrendering forces should leave the place with full honours, carrying their arms and baggage away and joining their own army unmolested by the enemy through whose lines they had to march.

Oppenheim, vol. 2, p. 286.

Form of capitulations.

No rule of international law exists regarding the form of capitulations, which may, therefore, be concluded either orally or in writing. But they are usually concluded in writing. Negotiations for surrender, from whichever side they emanate, are usually sent under a flag of truce, but a force which is ready to surrender without special conditions can indicate their intention by hoisting a white flag as a signal that they abandon all and every resistance. The question whether the enemy must at once cease firing and accept the surrender, is to be answered in the affirmative, provided he is certain that the white flag was hoisted by order or with the authority of the commander of the respective force. As, however, such hoisting may well have taken place without the authority of the commander and may, therefore, be disowned by the latter, no duty exists for the enemy to cease his attack until he is convinced that the white flag really indicates the intention of the commander to surrender.

Oppenheim, vol. 2, p. 286.

Authority of commanders.

The competence to conclude capitulations is vested in the commanders of the forces opposing each other. Capitulations entered into by unauthorised subordinate officers may, therefore, be disowned by the commander concerned without breach of faith. As regards special conditions of capitulations, it must be particularly noted that the competence of a commander to grant them is limited to those the fulfilment of which depends entirely upon the forces under his command. If he grants conditions against his instructions, his superiors may disown such conditions. And the same is valid if he grants conditions the fulfilment of which depends upon forces other than his own and upon superior officers.

Oppenheim, vol. 2, p. 287.

That capitulations must be scrupulously adhered to is an old customary rule, now enacted by article 35 of the Hague Regulations. Any act contrary to a capitulation would constitute an international delinquency if ordered by the belligerent Government concerned, and a war crime if committed without such order. Such violation may be met with reprisals or punishment of the offenders as war criminals.

Oppenheim, vol. 2, p. 289.

Sponsions.

Every officer in chief command of an army, fleet, or fortified post, is competent to enter into a capitulation with regard to the forces or places under his control; but if he makes stipulations affecting other portions of the field of hostilities, they must be ratified by the commander-in-chief before they become valid. Moreover, the ratification of the supreme authorities in the state is required when a commander, supreme or subordinate, makes a capitulation at variance with the terms of his instructions, or includes political conditions among the articles he agrees to. Stipulations in excess of the powers of those who make them are called *Sponsions*, and are null and void unless the principals on each side accept them. In default of such acceptance, an agreement of the kind we are considering has

no validity, and all acts done under it must be reversed as far as possible. A good example of a Sponsion is to be found in the Capitulation entered into by General Sherman in April, 1865, with General Johnston, the commander of the last Confederate army in the field east of the Mississippi. On condition that the Confederate soldiers should immediately disband and deposit their arms in the arsenals of their respective states, it provided that the state governments which submitted to the Federal authorities were to be recognized, and the people of the Confederacy guaranteed their political rights and franchises as citizens of the Union.

These conditions went beyond the sphere of military action, and were clearly in advance of the general's authority, though he had some reason to believe that they would prove acceptable. The government of Washington was, however, guilty of no act of bad faith when it repudiated them.

Lawrence, p. 563; W. T. Sherman, *Memoirs*, Vol. II, ch. xxiii.

Destruction of supplies, etc.

Undoubtedly it is the right, it may almost be called the duty, of the beaten commander to destroy as far as he can his stores, artillery, and instruments of warfare before he makes his surrender. Such destruction may go on during the negotiations, but it must cease the moment the agreement is concluded. The point was discussed in connection with the capitulation of Port Arthur in the Russo-Japanese War. General Stoessel destroyed war-ships, battle-flags, and some of the fortifications, before he gave up the place. But inasmuch as nothing of the kind was done after the signature of the capitulation at 9.45 A. M. on January 2, 1905, military honor was in no way violated. Japanese writers refrain from any accusations of disloyal conduct, and they regard the surrender as having been made in strict accordance with the laws of war.

Lawrence, pp. 563, 564; Takahashi, p. 210; Ariga, p. 324.

Capitulations therefore which transcend these limits [set out by Hall, above] require to be ratified by the commander-in-chief or the state of the officer granting them, and, if and when such ratification is received, the commander who accepted the terms is entitled to reconsider the situation and refuse the surrender. The article [Hague Regulations 35] and these maxims apply equally to the capitulations of fortresses and of field forces, and no less to those of naval forces.

Westlake, vol. 2, p. 92.

In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged.

Lieber, art. 129.

So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

Lieber, art. 144.

After signing the capitulation of a fortified place, the capitulator must not injure the works or property which he is to deliver up, unless the right to do so is reserved in the capitulation.

Field, p. 509.

A capitulation can be validly concluded in international law by any independent commander, within the limits of his competence and of the means at his actual disposal in the local circumstances, or indeed by a plenipotentiary who represents that commander. Some legislations forbid the conclusion of capitulations in certain determined conditions.

Swiss Manual, p. 30.

The one who capitulates, in particular, when once the act of capitulation has been signed, can no longer of himself make any modification whatever in the conditions regulating the fate of the personnel or *matériel.*

On the other hand, it is admitted that a capitulation may be annulled at any time, if help from outside comes up.

Swiss Manual, p. 30.

Before the signature of the capitulation, the commander of the place may take all measures that seem good to him and effect any destruction.

On the contrary, after the signature of the capitulation he is obliged to hand over the place exactly in the state in which it was at the very moment of such signature.

Jacomet, p. 87.

The condition accorded the besieged in the capitulation should not be made worse than that of prisoners of war. The disarmed adversary should not be subjected to humiliating conditions.

Jacomet, p. 87.

A capitulation is an agreement entered into between commanders of belligerent forces for the surrender of a body of troops, a fortress, or other defended locality, or of a district of the theatre of operations.

Capitulations are essentially military agreements, which involve the cessation of further resistance by the force of the enemy which capitulates. The surrender of a territory is frequently spoken of as an evacuation.

U. S. Manual, p. 76.

The commander of a fort or place and the commander in chief of an army are presumed to be duly authorized to enter into capitulations, being responsible to their respective governments for any excess of power in stipulations entered into by them. His powers do not extend beyond what is necessary for the exercise of his command. He does not possess power to treat for a permanent cession of the place under his command, for the surrender of a territory, for the cessation of hostilities in a district beyond his command, or generally to make or agree to terms of a political nature or such as will take effect after the termination of hostilities.

U. S. Manual, p. 76.

In the terms of capitulation the following subjects are usually determined:

(a) The fate of the garrison, including those persons who may have assisted them;

(b) The disarming of the place and of the defenders;

(c) The turning over of the arms and *matériel*, and, in a proper case, the locating of the mine defences, etc.;

(d) Provisions relative to private property of prisoners, including personal belongings and valuables;

(e) The evacuation of and taking possession of the surrendered place;

(f) Provisions relative to the medical personnel, sick, and wounded;

(g) Provisions for taking over the civil government and property of the place, with regard to the peaceable population;

(h) Stipulations with regard to the immediate handing over to the besiegers of certain forts or places, or other similar provisions, as a pledge for the fulfilment of the capitulation.

U. S. Manual, p. 77.

Damage or destruction of property prohibited after capitulation.— So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in same.

U. S. Manual, p. 79.

A capitulation can be denounced and hostilities immediately resumed for failure to execute any clause which has been agreed upon, or in case it was obtained through a breach of faith.

U. S. Manual, p. 79.

The Hague Rules only contain one article on the subject of capitulations, and this enacts that they must take into account the rules of military honor. The Hague Rules require, therefore, supplementing by the customary rules of warfare.

Edmonds and Oppenheim, art. 317.

Once the terms of capitulation are settled they must be scrupulously observed by both parties.

Edmonds and Oppenheim, art. 323.

* * * a serious breach of the accepted conditions of a capitulation entitles the adversary to an immediate renewal of hostilities without further notice.

A capitulation may be denounced if a party to it formally refuse to execute any clause which has been agreed upon, and it may be cancelled if it was obtained by a breach of faith. It may not, however, be annulled because one of the parties has been induced to agree to it by ruse, or from motives for which there is no justification, or by his own incapacity or feebleness.

A capitulation which took place after a general armistice has been agreed upon, and of which the parties to the capitulation had had no

knowledge, is null and void, unless the armistice stipulated cessation of hostilities from the time when notification reaches the different forces concerned, and not from the date of signature.

Edmonds and Oppenheim, arts. 323–325.

Conditions which violate the military honour of those capitulated are not permissible according to modern views.

German War Book, p. 138.

Articles 35, Annex to Hague Convention IV, 1907, is substantially identical with section 185, Austro-Hungarian Manual, 1913.

"If there is one rule of the law of war more clear and peremptory than another, it is that compacts between enemies, such as truces and capitulations, shall be faithfully adhered to; and their non-observance is denounced as being manifestly at variance with the true interest and duty, not only of the immediate parties, but of all mankind."

Mr. Webster, Secretary of State, to Mr. Thompson, April 5, 1842, 6 *Webster's Works*, 438.

A capitulation entered into by a belligerent in regard to the surrender of one of its possessions binds its allies.

Moore's Digest, vol. 7, p. 321, citing *The Resolution*, Federal Court of Appeals, 2 Dall. 1, 15.

ARMISTICE, EFFECT AND DURATION OF.

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.[1]—*Article 36, Regulations, Hague Convention IV, 1907.*

Chapter V, Armistices. (Articles 36 to 41).

This chapter contains six articles corresponding to Articles 47 to 52 of the Brussels project and almost reproduces their wording.

Article 36 determines the *effects and duration of an armistice;* Article 37 distinguishes between *general* and *local* armistices. These two articles are simply reproductions of Articles 47 and 48 of Brussels.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

Permissible acts, during an armistice.

A truce only temporarily stays hostilities; and each party to it may, within his own territories, do whatever he would have a right to do in time of peace. He may continue active preparations for war, by repairing fortifications, levying and disciplining troops, and collecting provisions and articles of war. He may do whatever, under all the circumstances, would be deemed compatible with good faith and the spirit of the agreement, but he is justly restrained from doing what would be directly injurious to the enemy, and could not safely be done in the midst of hostilities. Thus, in the case of a truce between the governor of a fortified town and the army besieging it, neither party is at liberty to continue works, constructed either for attack or defence, and which could not safely be done if hostilities had continued; for this would be to make a mischievous and fraudulent use of the cessation of arms. So, it would be a fraud upon the rights of the besieging army, and an abuse of the armistice, for the garrison to avail themselves of the truce to introduce provisions and succors into the town, in a way or through passages which the besieging army would have been competent to prevent. The meaning of every such compact is, that all things should remain as they were in the places contested, and of which the possession was disputed, at the moment of the conclusion of the truce.

Kent, vol. I, p. 176.

[1] This article is substantially identical with Article 36, Regulations, Hague Convention II, 1899, and with Article 47, Declaration of Brussels.

At the expiration of the truce, hostilities may recommence without any fresh declaration of war; but if it be for an indefinite time, justice and good faith require due notice of an intention to terminate it.

Kent, vol. 1, p. 176.

Permissible acts, during an armistice.

During the continuance of a general truce, each party to it may, within his own territories, do whatever he would have a right to do in time of peace, such as repairing or building fortifications, constructing and fitting out vessels, levying and disciplining troops, casting cannon and manufacturing arms, and collecting provisions and munitions of war. He may also move his armies from one part of his territory to another, not occupied by the enemy, and call home, or send abroad upon the ocean his vessels of war. And, in the theatre of hostilities, and in the face of the enemy, he may do whatever, under all the circumstances, would be deemed compatible with good faith and the spirit of the agreement. In the case of a truce between the governor of a fortress or fortified town, and the general or admiral investing it, either party is at liberty to do what he could safely have done if hostilities had continued. For example, the besieged may repair his material of war, replenish his magazines, and strengthen his works, if such works were beyond the reach of the enemy at the beginning of the truce, and if the provisions and succors are introduced into the town in a way or through passages which the besieging army could not have prevented. But the besieged cannot construct or repair works of defence, if he could not safely have done this in case the hostilities had continued; nor introduce provisions, military munitions or troops through passages which were occupied or commanded by the enemy at the time of the cessation of hostilities; nor can the besiegers continue works of attack which might have been prevented or interrupted by the besieged; for all acts of this kind would be making a mischievous and fraudulent use of the agreement, and violating its good faith and spirit; the general meaning of such compacts is, that all things within the limits of the theatre of immediate operations shall remain as they were at the moment of the conclusion of the truce. To receive and harbour deserters within such limits, is an act of hostility, and, therefore, a violation of the complied conditions of a truce.

Halleck, p. 657.

As a truce, or amistice, merely suspends hostilities, they are renewed at its expiration without any new declaration or notice; for as every one is bound to know the effect of such termination, no public declaration is required. But if the truce was for an indefinite period of time, justice and good faith require due notice of intention by the party who terminates it.

Halleck, p. 660.

To prevent the disputes and difficulties arising from such questions, it is usual to stipulate in the convention of armistice, as in treaties of peace, a prospective period within which hostilities are to cease, with a due regard to the situation and distance of places.

Dana's Wheaton, p. 498.

Permissible acts, during an armistice.

Besides the general maxims applicable to the interpretation of all international compacts, there are some rules peculiarly applicable to conventions for the suspension of hostilities. The *first* of these peculiar rules, as laid down by Vattel, is that each party may do within his own territory, or within the limits prescribed by the armistice, whatever he could do in time of peace. Thus either of the belligerent parties may levy and march troops, collect provisions and other munitions of war, receive re-enforcements from his allies, or repair the fortifications of a place not actually besieged.

The *second* rule is, that neither party can take advantage of the truce to execute, without peril to himself, what the continuance of hostilities might have disabled him from doing. Such an act would be a fraudulent violation of the armistice. For example:—in the case of a truce between the commander of a fortified town and the army besieging it, neither party is at liberty to continue works, constructed either for attack or defence, or to erect new fortifications for such purposes. Nor can the garrison avail itself of the truce to introduce provisions or succors into the town, through the passages or in any other manner which the besieging army would have been competent to obstruct and prevent, had hostilities not been interrupted by the armistice.

The *third* rule stated by Vattel, is rather a corollary from the preceding rules than a distinct principle capable of any separate application. As the truce merely suspends hostilities without terminating the war, all things are to remain in their antecedent state in the places, the possession of which was specially contested at the time of the conclusion of the armistice.

It is obvious that the contracting parties may, by express compact, derogate in any and every respect from these general conditions.

Dana's Wheaton, p. 498; *Droit des Gens*, liv. iii, ch. 16, secs. 245–251.

At the expiration of the period stipulated in the truce, hostilities recommence as a matter of course, without any new declaration of war. But if the truce has been concluded for an indefinite, or for a very long period, good faith and humanity concur in requiring previous notice to be given to the enemy of an intention to terminate what he may justly regard as equivalent to a treaty of peace. Such was the duty inculcated by the Fecial college upon the Romans, at the expiration of a long truce which they had made with the people of Veii. That people had recommenced hostilities before the expiration of the time limited in the truce. Still it was held necessary for the Romans to send heralds and demand satisfaction before renewing the war.

Dana's Wheaton, p. 499; Liv. Hist. lib. iv, cap. 30.

Permissible acts, during an armistice.

A truce being in itself a mere negation of hostilities, it is a little difficult to say what may, or may not, be done during its continuance. The following rule, if we are not deceived, expresses the views of most text-writers: that the state in which things were before the truce is so far to be maintained that nothing can be done to the prejudice of either party by the other, which could have been prevented in war, but which the truce gives the power of doing. But

may a besieged place, during a truce, repair its walls and construct new works? This, which Wheaton after Vattel denies, is affirmed by Heffter (u. s.), after Grotius and Puffendorf. Heffter also declares it to be unquestioned that the besieger cannot continue his works of siege, thus giving to the besieged in any partial truce the advantage over his foe. This question is whether to strengthen works of offense or of defense is an act of hostility, and is consistent with a promise to suspend hostilities. It would appear that neither party can act thus in good faith, unless it can be shown that the usages of war have restricted the meaning of truce to the suspension of certain operations. The rule then laid down by Vattel, and which he is obliged to qualify by several others, namely, that each may do among themselves, that is, within their own territories or where they are respectively masters, what they would have the right to do in peace, is true only of the general operations of war. A power may use the interval in collecting its forces, strengthening its works which are not attacked, and the like. But, when we come to the case of besieged towns, the question is of what are the two parties masters, and various quibbles might be devised to allow either of them to do what he pleased. The governor of a town, says Vattel, may not repair breaches or construct works which the artillery of the enemy would render it dangerous to labor upon during actual siege, but he may raise up new works or strengthen existing ones to which the fire or attacks of the enemy were no obstacle. Why, if he may do this, may not the besiegers strengthen their works which are not exposed to the guns of the fortress? Much the same may be said of revictualing besieged places. The garrison cannot rightfully make use of the truce in ways which the besiegers could have prevented, if the siege had gone on in its course. In the case of besieged towns, arrangements are sometimes made allowing a certain amount of provisions to enter them. Calvo would distinguish between a besieged town and an army blocked up outside of a town. In the last case but for the truce the army could have made use of the rights of war to help themselves to provisions, and the revictualing would change nothing in the relative position of the adversaries. In a proposed armistice in 1870, the neutral powers urged on Prussia to allow a revictualing of Paris then besieged, proportional to the length of the truce; but these terms were not accepted, and so the truce fell through. (Calvo, ii., sec. 980.)

Woolsey, pp. 258, 259.

When a truce is concluded for a specified time, no notice is necessary of the recommencement of hostilities. Every one who lingers freely in the enemy's country or within his lines, after this date, is obnoxious to the law of war. But forced delay on account of illness, or other imperative reason, would exempt such a one from harsh treatment.

Woolsey, pp. 259, 260.

Agreements for the temporary cessation of hostilities are called suspensions of arms when they are made for a passing and merely military end and take effect for a short time or within a limited space; and they are called truces or armistices when they are concluded for a longer term, especially if they extend to the whole or a considerable portion of the forces of the belligerents, or have an entirely or partially political object.

As neither belligerent can be supposed in making such agreements to be willing to prejudice his own military position, it is implied in them that all things shall remain within the space and between the forces affected as nearly as possible in the condition in which they were at the moment when the compact was made, except in so far as causes may operate which are independent of the state of things brought about by the previous operations; the effect of truces and like agreements is therefore not only to put a stop to all directly offensive acts, but to interdict all acts tending to strengthen a belligerent which his enemy apart from the agreement would have been in a position to hinder. Thus in a truce between the commander of a fortress and an investing army the besieger can not continue his approaches or make fresh batteries, while the besieged can not repair damages sustained in the attack, nor erect fresh works in places not beyond the reach of the enemy at the beginning of the truce, nor throw in succours by roads which the enemy at that time commanded; and in a truce between armies in the field neither party can seize upon more advanced positions, nor put himself out of striking distance of his enemy by retreat, nor redistribute his corps to better strategical advantage. But in the former case the besieged may construct works in places hidden from or unattainable by his enemy, and the besieger may receive reinforcements and material of war; and in the latter case magazines may be replenished and fresh troops may be brought up and may occupy any position access to which could not have been disputed during the progress of hostilities. During the continuance of a truce covering the whole forces of the respective states a belligerent may still do all acts, within such portion of his territory as is not the theater of war, which he has a right to do independently of the truce; he may therefore levy troops, fit out vessels, and do everything necessary to increase his power of offense and defence.

Whether the revictualing of a besieged place should be permitted as of course during the continuance of a truce is a question which stands somewhat apart. The introduction of provisions is usually mentioned by writers as being forbidden in the absence of special stipulations whenever the enemy might but for the truce have prevented their entrance; there can be no doubt that the same view would be taken by generals in command of a besieging army; and as it is not in most cases possible to introduce trains of provisons in the face of an enemy, the act of doing so under the protection of a truce might at first sight seem to fall naturally among the class of acts prohibited for the reason that apart from the truce they could not be effected. It is however in reality separated from them by a very important difference. Provisions are an exhaustible weapon of defence, the consumption of which, unlike that of munitions of war, continues during a truce or armistice; the ultimate chances of successful resistance are lessened by every ration which is eaten, and to prohibit their renewal to the extent to which they are consumed is precisely equivalent to destroying a certain number of arms for each day that the armistice lasts. To forbid revictualment is therefore not to support but to infringe the principle that at the end of a truce the state of things shall be unchanged in those matters which an enemy can influence. Generally no doubt armistices contain special stipulations for the supply of food by the besieger, or

securing the access of provisions obtained by the garrison or non-combatant population under the supervision of the enemy, who specifies the quantity which may from time to time be brought in. The view consequently that revictualing is not a necessary accompaniment of a truce is rarely of practical importance; but as a belligerent can not be expected to grant more favorable terms to his enemy than can be demanded in strict law, if he sees advantage in severity he will be tempted to refuse to allow provisions to be brought into an invested place, if he is strong enough to impose his will, whenever the starvation of the garrison and the inhabitants is likely to influence the determination of his adversary. A case in point is supplied by the refusal of Count Bismarck in November, 1870, to allow Paris to receive sufficient food for the subsistence of the population during an armistice of twenty-five days' duration which it was then proposed to conclude in order that an Assembly might be elected competent to decide upon the question of making peace. There can be no question that a rule permitting revictualment from day to day, or at short intervals, under the supervision of the besieger, unless express stipulations to the contrary were made, would be better than at present recognized. Besides being more equitable in itself, it would strengthen the hands of the besieged, or in other words the weaker party, in negotiation.

Hall, pp. 565–568.

All commanding officers may conclude suspensions of arms with a view to burying the dead, to have time for obtaining permission to surrender, or for a parley or conference; for longer periods and larger purposes officers in superior command have provisional competence within their own districts, but armistices concluded by them cease to have effect if not ratified by the supreme authority, so soon as notice of non-ratification is given to the enemy; agreements for an armistice binding the whole forces of a state are obviously state acts, the ordinary powers of a general or admiral in chief do not therefore extend to them, and they can only be made by the specially authorized agents of the government.

Hall, p. 569.

Truces and like agreements are sometimes made for an indefinite, but more commonly for a definite period. In the former case the agreement comes to an end on notice from one of the belligerents, which he is sometimes required to give at a stated time before the resumption of hostilities; in the latter case provision is sometimes made for notice to be given a certain number of days before the date fixed and sometimes the truce expires without notice.

Hall, p. 570.

There is no difference of meaning, according to British usage at least, between a "truce," an "armistice," and a "suspension of arms." See General Horsford's remarks at the Brussels Conference, *Parl. Paper*, Misc. No. 1, 1875, p. 32.

Holland, p. 50.

Permissible acts, during an armistice.

It is now generally held that a belligerent may do everything which is not expressly forbidden in the armistice and if he thus secures an advantage, the other belligerent is estopped from complaining, for he should have displayed more foresight in the negotiations. It was proposed, in the draft for the Brussels Conference, to make the matter clear by laying down that—

"On the conclusion of an armistice, what each of the parties may do, and what he may not do, shall be precisely stated."

The article was suppressed, not because its principle was controverted, but because it was supposed to be implied in the terms of what is now Article 36. It is perhaps unfortunate that the article was not allowed to stand, but one cannot take the suppression as a denial of its correctness. It is certainly the principle which has been followed in practice. A case which arose in the Russo-Turkish War of 1877–8 is instructive on the point. During the armistice of Adrianople, which preceded the peace of San Stefano, General Totleben erected a series of high observation posts, from which the Russian sentries could see into the Turkish entrenchments, along the front of his position. Such posts could not have been erected without opposition had no armistice existed, and the Turkish commander, Fuad Pasha, demanded that they should be removed at once, failing which he proposed to open fire along the whole line. Totleben declined to remove the posts and sent a strongly-worded remonstrance to Constantinople, with the result that Fuad Pasha's action was disavowed by his Government. The right of Totleben to do as he had done was never questioned. The same principle of liberty of action was followed in the armistice arranged at Santiago in 1898, each belligerent being left free "to profit by the armistice to the best of his interests, on the sole condition that his acts were not actually hostile ones"—which would, of course, amount to a violation of the armistice, *hostilities* being suspended. Similarly during the armistice concluded in July, 1866, at the close of the Seven Weeks' War, the Prussian commander, whose line lay from Brünn to Ebenthal, aroused no Austrian protest when he massed his troops on his left with a view to making a dash on Presburg if the peace negotiations should fail; the Prussians lay "concentrated in one huge mass, like a crouching lion, ready to spring upon the Danube."

If Hall's opinion is correct, that "in a truce between armies in the field, neither party can * * * redistribute his corps to better strategical advantage," then the action of Prince Frederick Charles on this occasion was a breach of the armistice, which Austria would hardly have allowed to go without a protest. But the English jurist's view does not appear to commend itself even to the British military authorities. The British *Official History* of the Boer War records that, as the armistice arranged by Buller and Botha at the Tugela Heights on 25th February, 1900, did not expressly forbid the movements of troops, the artillery commanders were able to transfer their guns to new positions without being shelled by the Boers, and much work was done on the right bank of the river in making roads to the site of the proposed pontoon bridge. There is little likelihood of a belligerent regarding himself as bound by the very doubtful rule which the English jurists maintain, and of refraining from exercising a very full liberty of action in future armistices; if his liberty is cur-

tailed it must be in virtue of an express clause in the armistice and not under any general rule of war law. Where no mention of a particular act or operation is made, silence will certainly be taken as giving consent. * * *

The French *Manuel* (p. 62) expressly rejects the view that a belligerent must abstain from everything which the other could have prevented had there been no armistice. "This theory," says the *Manuel*, "has the capital defect of not being practical, of opening the way to abuses and recriminations, and consequently it has not prevailed during recent wars." Both the *American Instructions* (paragraph 143) and the German *Kriegsbrauch im Landkriege* (p. 44) recommend that the conditions of the armistice should make it quite clear in each case whether damaged or destroyed fortifications may be repaired, in view of the diversity of opinions on the subject, and the recommendation is equally applicable to the many other points in which disputes may arise as to a belligerent's right of action during an armistice.

Spaight, pp. 236–238; Brussels B. B. pp. 175, 209; Hozier, *Seven Weeks' War*, p. 414; Hall, p. 544; Maurice, *Official History*, vol. II, p. 502.

Armistice not "temporary peace."

Armistices or truces, in the wider sense of the term, are all agreements between belligerent forces for a temporary cessation of hostilities. They are in no wise to be compared with peace, and ought not to be called temporary peace, because the condition of war remains between the belligerents themselves, and between the belligerents and neutrals on all points beyond the mere cessation of hostilities. In spite of such cessation the right of visit and search over neutral merchantmen therefore remains intact, as does likewise the right to capture neutral vessels attempting to break a blockade, and the right to seize contraband of war.

Oppenheim, vol. 2, p. 290.

Conditions as to time.

In case an armistice has been concluded for an indefinite period, the parties having made no stipulations regarding notice to recommence hostilities, notice may be given at any time, and hostilities recommenced at once after notification. In most cases, however, armistices are agreed upon for a definite period, and then they expire with such period without special notice, unless notification has been expressly stipulated. If, in case of an armistice for a definite period, the exact hour of the termination has not been agreed upon, but only the date, the armistice terminates at twelve o'clock midnight of such date. In case an armistice has been arranged to last from one certain day to another, *e. g.* from June 15 to July 15, it is again controversial whether July 15 is excluded or included. An armistice may, lastly, be concluded under a resolutive condition, in which case the occurrence of the condition brings the armistice to an end.

Oppenheim, vol. 2, p. 299.

Terms.

The agreement for an armistice should contain clear announcements with regard to all matters as to which the intentions of the parties might be doubtful in the absence of specific declarations, such, for

instance, as the exact day and hour when the armistice begins and ends, the exceptions, if any, from the rule that no hostilities are to be allowed while it lasts, the precise boundaries of the neutral zone that is generally interposed between the armies, and the preparations that may be allowed for continuing the contest if necessary. The terms used cannot be too precise, if dangerous disputes are to be avoided. In default of definite stipulations, we may extract a certain amount of guidance from the general rules of International Law. But the provisions of law-making documents do not cover the whole ground, and constantly require interpretation from usage, which is itself wanting in precision on several points.

Lawrence, pp. 565, 566.

Permissible acts, during an armistice.

There is a controversy whether during an armistice a belligerent may do, in the actual theatre of war, only such things as the enemy could not have prevented him from doing at the moment when active hostilities ceased, or whether he may do whatever is not forbidden expressly, except, of course, attack the enemy or advance further into his territory. The weight of authority is in favor of the former alternative; but the weight of reasoning seems on the side of the latter, which has the decisive support of recent practice. Beyond the zone of active operations the parties may perform what acts of naval and military preparation they please. They can fit out ships, move troops, recruit armies, and, in short, act as if hostilities were still going on. There is, however, a dispute about the revictualling of a besieged place. This is a matter eminently fit for settlement by one of the articles of the armistice. Generally the besiegers are the stronger party and dictate their own terms, as the Germans did in 1871, when they would not allow Paris to receive any supplies during the armistice which preceded its surrender.

Lawrence, pp. 566, 567.

Principle of armistice.

The principle which governs the suspension of military operations by an armistice is that nothing may be done by either party which the other party would have been in a position to hinder. It has been contended that the principle ought to be that during the armistice the state of things shall remain unchanged, which would give to a besieged fortress a right to be revictualled to the extent of the provisions consumed, but it is certain that the besiegers will not allow such a right unless stipulated.

Westlake, vol. 2, pp. 92, 93.

An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.[1]

The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

[1] This is repeated in the *U. S. Manual* as paragraph 256*a*.

Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case, the war is carried on without any abatement.

Lieber, arts. 135, 138, 147.

If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties.

An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists, whether the besieged have the right to repair breaches or to erect new works of defence within the place during an armistice, this point should be determined by express agreement between the parties.

Lieber, arts. 136, 137, 143.

An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

Lieber, art. 142.

Unless the terms of a truce or armistice indicate a different intention of the parties, the following rules apply:

1. * * *

2. Neither party, during its continuance, can do any act directly injurious to the other;

3. Neither party can take advantage of the cessation of hostilities to gain a different position, or to threaten or strengthen a besieged place by works or military supplies, or to do any other act which could not safely be done in the midst of hostilities; but all things are to remain as they were in the places contested, and of which the possession was disputed at the moment of concluding the truce or armistice; and,

4. Subject to the foregoing restrictions, either party may continue general active preparations for war, by constructing or repairing fortifications, raising troops and gathering supplies.

* * * * * * *

A truce or armistice is terminated, either,

1. By the expiration of the time limited by its terms; or,

2. If no time be limited, then upon the expiration of due notice given to either party by the other to terminate it at a specified time; or, * * *

At the expiration of a truce or armistice, hostilities may be commenced without any new declaration of war, or notice, unless otherwise agreed.

Field, pp. 507–509.

The notion of an operation of war should be strictly interpreted. In case of doubt, it is only acts of violence and movements of troops beyond a line of demarcation regularly agreed upon that are forbidden.

There is no right to revictual a besieged place.

The duration of a limited armistice is generally determined by the time elapsing from the moment when it is concluded until the day and hour fixed for its termination. There does not exist any universally adopted rule on this subject.

Swiss Manual, p. 31.

An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

* * * * * * *

In all armistices it is of the utmost importance that the exact moment for the commencement and for the termination of same shall be fixed in the terms thereof beyond any possibility of mistake or misconception.

U. S. Manual, p. 88.

An armistice need not in terms prohibit actual hostilities. Anything else may be done during an armistice that is not in express terms prohibited by the agreement.

U. S. Manual, p. 89.

The duration of an armistice may be for a definite or indefinite time, and with or without a further period of notice of expiration.

If its duration is indefinite the belligerent parties may resume operations at any time, provided always that the enemy be notified so that the recommencement of hostilities may not be a surprise.

Edmonds and Oppenheim, arts. 275, 276.

By armistice is understood a temporary cessation of hostilities by agreement. It rests upon the voluntary agreement of both parties.

German War Book, p. 141.

During the armistice nothing must occur which could be construed as a continuation of hostilities, the *status quo* must rather be observed as far as possible, provided that the wording of the treaty does not particularize anything to the contrary. * * *

As regards its duration, an armistice can be concluded either for a determined or an undetermined period, and with or without a time for giving notice. If no fixed period is agreed upon, then hostilities can be recommenced at any time. This, however, is to be made known to the enemy punctually, so that the resumption does not represent a surprise. If a fixed time is agreed on, then hostilities can be recommenced the very moment it expires, and without any previous notification.

German War Book, pp. 144, 145.

Article 36, Annex to Hague Convention IV, 1907, is substantially identical with section 186, Austro-Hungarian Manual, 1913.

One of the most remarkable examples of a suspension of hostilities which, though in terms temporary, was in effect permanent, was the armistice concluded between Spain and the allied republics on the west coast of South America, at Washington, in 1871. By this armistice the contracting parties were forbidden to renew hostilities against each other, except on three years' notice given through the Government of the United States of an intention to do so, and it was further stipulated that during the continuance of the armistice all restrictions on neutral commerce which were incident to a state of war should cease.

Moore's Digest, vol. 7, p. 332.

ARMISTICES, GENERAL OR LOCAL.

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius.[1]—*Article 37, Regulations, Hague Convention IV, 1907.*

* * * Article 37 distinguishes between *general* and *local* armistices. These two articles are simply reproductions of Articles 47 and 48 of Brussels.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

By Article II. of the treaty of Guadalupe Hidalgo, it was stipulated that immediately upon the signature of the treaty a suspension of hostilities should be arranged, and that the constitutional order should be reestablished so far as the circumstances of military occupation permitted. A military convention for this purpose was concluded in the City of Mexico, February 29, 1848, and was ratified by Major-General Butler on the 5th of the following month, and was proclaimed the next day. It provided for the absolute and general suspension of arms and hostilities, stipulating that the troops of neither side should advance beyond the positions then occupied by them. The convention consisted of seventeen articles, and entered into much detail.

Moore's Digest, vol. 7, p. 332.

"Immediately upon the conclusion of the protocol I issued a proclamation of August 12th suspending hostilities on the part of the United States. The necessary orders to that end were at once given by telegraph. The blockade of the ports of Cuba and San Juan de Porto Rico was in like manner raised. On the 18th of August the muster out of 100,000 volunteers, or as near that number as was found to be practicable, was ordered."

President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, LXV.

A particular truce is only a partial cessation of hostilities, as between a town and an army besieging it. But a general truce applies to the operations of the war; and if it be for a long or indefinite period of time, it amounts to a temporary peace, which leaves the state of the contending parties, and the questions between them, remaining in the same situation as it found them. A partial truce may be made by a subordinate commander, and it is a power necessarily implied in the nature of his trust; but it is requisite to a general truce, or suspension of hostilities throughout the nation, or for

[1] This article is identical with Article 37, Regulations, Hague Convention II, 1899, and with Article 48, Declaration of Brussels.

a great length of time, that it may be made by the sovereign of the country, or by his special authority. The general principle on the subject is, that if a commander makes a compact with the enemy, and it be of such a nature that the power to make it could be reasonably implied from the nature of the trust, it will be valid and binding though he abuse his trust. The obligation he is under not to abuse his trust regards his own state, and not the enemy.

Kent, vol. 1, p. 175.

Suspension of arms, truce, or armistice.

If the cessation of hostilities is only for a very short period, or at a particular place, or for a temporary purpose, such as for a parley, or a conference, or for removing the wounded, and burying the dead, after a battle, it is called *a suspension of arms*. This kind of compact may be formed between the immediate commanders of the opposing forces, and is obligatory upon all persons under their respective commands. Even commanding officers of detachments may enter into this kind of compact, but such an agreement can only bind the detachment itself; it cannot affect the operations of the main army, or of other troops not under the authority of the officer making it. A suspension of arms is only for a temporary purpose, and for a limited period. If the suspension of hostilities is for a more considerable length of time, or for a more general purpose, it is called a *truce* or an *armistice*. Truces are either partial or general. A partial truce is limited to particular places, or to particular forces, as a suspension of hostilities between a town or fortress and the forces by which it is invested, or between two hostile armies or fleets. But a general truce applies to the general operations of the war, and whether it be for a longer or shorter period of time, it extends to all the forces of the belligerent states, and restrains the state of war from producing its proper effects, leaving the contending parties and the questions between them in the same situation in which it found them.

* * * * * * *

Such a general suspension of hostilities throughout the nation, can only be made by the sovereignty of the state, either directly or by authority specially delegated. Such authority, not being essential to enable a general or commander to fulfil his official duties, is never implied, and, in such a case, the enemy is bound to see that the agent is specially authorized to bind his principal. But a partial truce may be concluded between the military and naval commanders of the respective forces, without any special authority for that purpose, where, from the nature and extent of their commands, such authority is necessarily implied, as essential to the fulfilment of their official duties If the commander, in making such a compact, has abused his trust to the advantage of the enemy, he is accountable to his own state for such abuse.

Halleck, pp. 653, 654.

There are various modes in which the extreme rigor of the rights of war may be relaxed at the pleasure of the respective belligerent parties. Among these is that of a suspension of hostilities, by means of a truce or armistice. This may be either general or special. If it be general in its application to all hostilities in every place, and is to

endure for a very long or indefinite period, it amounts in effect to a temporary peace, except that it leaves undecided the controversy in which the war originated. Such were the truces formerly concluded between the Christian powers and the Turks. Such, too, was the armistice concluded, in 1609, between Spain and her revolted provinces in the Netherlands. A partial truce is limited to certain places, such as the suspension of hostilities, which may take place between two contending armies, or between a besieged fortress and the army by which it is invested.

The power to conclude a universal armistice or suspension of hostilities is not necessarily implied in the ordinary official authority of the general or admiral commanding in chief the military or naval forces of the State. The conclusion of such a general truce requires either the previous special authority of the supreme power of the State, or a subsequent ratification by such power.

A partial truce or limited suspension of hostilities may be concluded between the military and naval officers of the respective belligerent States, without any special authority for that purpose, where, from the nature and extent of their commands, such an authority is necessarily implied as essential to the fulfilment of their official duties.

Dana's Wheaton, pp. 497, 498.

A temporary suspension of the operations of war at one or more places is called a truce or armistice. A truce may be *special*, referring to operations before a fortress or in a district, or between certain detachments of armies, or *general*, implying a suspension of hostilities in all places. A general truce can be made only by the sovereign power or its agents, specially empowered for this purpose. A special or partial truce may be concluded according to the usage of nations by a military officer, even by a subordinate one within his district. This usage rests on the consideration that both policy and humanity require that such a discretionary power should be lodged in those who, being on the spot, can best understand the exigencies of the case. If an officer should be restricted in the use of this power contrary to usage and yet should exercise it, his agreement, at least if not corruptly made, would be binding on his sovereign, provided that the other party knew nothing of the restriction. For that party had a right to infer from prevalent usage and the nature of the command entrusted to him that he had this power.

Woolsey, p. 257.

A general armistice is, of course, in excess of the implied authority of a local commander.

An armistice should specify, as far as possible, the acts which are forbidden, and those which are permitted, to the belligerents during its continuance.

Holland, p. 50.

English jurists make no distinction between armistices and suspension of arms, the former term being used indifferently of all such conventions; and no distinction is drawn in the *Règlement*. A suspension of arms is indeed only a particular kind of armistice and the same rules apply to both.

Spaight, p. 233.

Although all armistices are essentially alike in so far as they consist of cessation of hostilities, three different kinds must be distinguished—namely, (1) suspensions of arms, (2) general armistices, and (3) partial armistices. It must be emphasised that the Hague Regulations deal with armistices in articles 36 to 41 very incompletely so that the gaps need filling up from old customary rules.

Oppenheim, vol. 2, p. 290, 291.

Suspensions of arms.

Suspensions of arms, in contradistinction to armistices in the narrower sense of the term, are such cessations of hostilities as are agreed upon between large or small military or naval forces for a very short time and regarding momentary and local military purposes only. Such purposes may be—collection of the wounded; burial of the dead; negotiation regarding surrender or evacuation of a defended place, or regarding an armistice in the narrower sense of the term; but may also be the creation of a possibility for a commander to ask for and receive instructions from a superior authority, and the like. Suspensions of arms have nothing to do with political purposes, or with the war generally, since they are of momentary and local importance only. They concern exclusively those forces and that spot which are the object of the suspension of arms. The Hague Regulations do not specially mention suspensions of arms, since article 37 speaks of local armistices only, apparently comprising suspensions of arms among local armistices.

Oppenheim, vol. 2, p. 291.

General armistices.

A general armistice is such a cessation of hostilities as, in contradistinction to suspensions of arms with their momentary and local military purposes, is agreed upon between belligerents for the whole of their forces and the whole region of war. General armistices are always conventions of vital political importance affecting the whole of the war. They are as a rule, although not necessarily, concluded for a political purpose. It may be that negotiations of peace have ripened so far that the end of the war is in sight and that, therefore, military operations appear superfluous; or that the forces of either belligerent are exhausted and need rest; or that the belligerents have to face domestic difficulties, the settlement of which is more pressing than the continuation of the war; or any other political purpose. Thus article 2 of the general armistice agreed upon at the end of the Franco-German War on January 28, 1871, expressly declared the purpose of the armistice to be the creation of the possibility for the French Government to convoke a Parliamentary Assembly which could determine whether or not the war was to be continued or what conditions of peace should be accepted.

It is of importance to note that, for particular reasons, small parts of the belligerent forces and small parts of the theatre of war may be specially excluded without detracting from the general character of the armistice, provided the bulk of the forces and the greater part of the region of war are included. Thus, article 1 of the above-mentioned general armistice at the end of the Franco-German war specially excluded all military operations in the Départements du

Doubs, du Jura, de la Côte d'Or, and likewise the siege of Belfort. It should also be mentioned that in the practice of belligerents the terms "suspension of arms" and "general armistice" are sometimes not sufficiently distinguished, but are interchangeable. Thus, for instance, the above-mentioned general armistice between France and Germany is entitled "Convention entre l'Allemagne et la France pour la suspension des hostilités, * * *" whereas the different articles of the Convention always speak correctly of an armistice, and whereas, further, an annexe to the Convention signed on January 29 is entitled "Annexe a la Convention d'armistice."

Oppenheim, vol. 2, p. 291, 292.

Suspensions of arms.

Since the character and purpose of suspensions of arms are military, local, and momentary only, every commander is supposed to be competent to agree upon a suspension of arms, and no ratification on the part of superior officers or other authorities is required. Even commanders of the smallest opposing detachments may arrange a suspension of arms.

Oppenheim, vol. 2, p. 293.

Partial armistices.

Partial armistices are agreements for cessations of hostilities which are not concluded by belligerents for their whole forces and the whole region of war, but do not merely serve, like suspensions of arms, momentary and local military purposes. They are armistices concluded by belligerents for a considerable part of their forces and front; they are always of political importance affecting the war in general; and they are very often, although they need not be, agreed upon for political purposes. Article 37 of the Hague Regulations apparently includes partial armistices together with suspensions of arms under the term "local" armistices. A partial armistice may be concluded for the military or the naval forces only; for cessation of hostilities in the colonies only; for cessation of hostilities between two of the belligerents in case more than two are parties to the war, and the like. But it is always a condition that a considerable part of the forces and region of war must be included, and that the purpose is not only a momentary one.

Oppenheim, vol. 2, p. 293.

General armistices.

Since general armistices are of vital political importance, only the belligerent Governments themselves or their commander-in-chief are competent to conclude them, and ratification, whether specially stipulated or not, is necessary. Should a commander-in-chief conclude a general armistice which would not find ratification, hostilities may at once be recommenced without breach of faith, it being a matter of common knowledge that a commander-in-chief is not authorized to agree upon exclusion of ratification, unless he received special powers thereto.

Oppenheim, vol. 2, pp. 293, 294.

Partial armistices.

Partial armistices may be concluded by the commanders-in-chief of the respective forces, and ratification is not necessary, unless specially stipulated; the commanders being responsible to their own Governments in case they agree upon a partial armistice without being specially authorized thereto.

Oppenheim, vol. 2, p. 294.

Form of armistices.

No legal rule exists regarding the form of armistices, which may therefore be concluded either orally or in writing. However, the importance of general as well as partial armistices makes it advisable to conclude them by signing written documents containing all items which have been agreed upon. No instance is known of a general or partial armistice of modern times concluded otherwise than in writing. But suspensions of arms are often only orally concluded.

Oppenheim, vol. 2, p. 294.

That hostilities must cease is the obvious content of all kinds of armistices. Usually, although not at all necessarily, the parties embody special conditions in the agreement instituting an armistice. If and so far as this has not been done, the import of armistices is for some parts much controverted. Everybody agrees that belligerents during an armistice may, outside the line where the forces face each other, do everything and anything they like regarding defence and preparation of offence; for instance, they may manufacture and import munitions and guns, drill recruits, build fortresses, concentrate or withdraw troops. But no unanimity exists regarding such acts as must be left undone or may be done within the very line where the belligerent forces face each other. The majority of writers, led by Vattel (III. § 245), maintain that in the absence of special stipulations it is essentially implied in an armistice that within such line no alteration of the *status quo* shall take place which the other party, were it for the armistice, could by application of force, for instance by a cannonade or by some other means, prevent from taking place. These writers consider it a breach of faith for a belligerent to make such alterations under the protection of the armistice. On the other hand, a small minority of writers, but led by Grotius (III. c. 21, § 7) and Pufendorf (VIII. 7, § 7), assert that cessation of hostilities and of further advance only are essentially implied in an armistice; all other acts, such as strengthening of positions by concentration of more troops on the spot, erection and strengthening of defences, repairing of breaches of besieged fortresses, withdrawing of troops, making of fresh batteries on the part of besiegers without advancing, and the like, being allowed. As the Hague Regulations do not mention the matter, the controversy still remains unsettled. I believe the opinion of the minority to be correct, since an armistice does not mean anything else than a cessation of actual hostilities, and it is for the parties who agree upon an armistice to stipulate such special conditions as they think necessary or convenient. This applies particularly to the other controversial questions as to revictualling of besieged places and as to intercourse, commercial and otherwise, of

the inhabitants of the region where actual fighting was going on before the armistice. As regards revictualling, it has been correctly maintained that, if it were not allowed, the position of the besieged forces would thereby be weakened by the action of the armistice. But I cannot see why this should be an argument to hold revictualling permissible. The principle *vigilantibus iura sunt scripta* applies to armistices as well as to all other legal transactions. It is for the parties to prepare such arrangements as really suit their needs and wants. Thus, during the Franco-German War an armistice for twenty-five days proposed in November 1870 fell to the ground on the Germans refusing to grant the revictualling of Paris.

Oppenheim, vol. 2, pp. 294–296.

An agreement to cease from active operations within a limited area, for a short time, and with the object of carrying out a definite purpose such as the burial of the dead, is generally called a *Suspension of Arms*, but it is also, and with equal propriety, termed an *Armistice*, the latter being the English usage. A similar agreement, extending over a very long period and applying to the whole field of warfare, goes frequently by the name of a *Truce*. It amounts in fact to a peace, except that no treaty is drawn up. Such lengthy cessations of hostilities are unknown in modern warfare, but operations are often suspended for a time in order that negotiations may take place between the belligerents, either for a definite peace, or for the surrender of some place or force; and these rifts in the clouds of war are called indifferently *Truces* or *Armistices*. The chief, if not the only distinction between them, appears to be that the former is an older word than the latter, which has come into general use within the last hundred and fifty years. Every commander has power to conclude a special, partial, or local armistice with respect to the forces and places under his immediate control, but a general armistice covering the whole field of hostilities can be made only by commanders-in-chief or diplomatic representatives, and requires ratification by the supreme power in the state. At the end of the Russo-Japanese War in 1905 the general armistice which preceded the peace was drawn up and signed by the plenipotentiaries engaged in negotiating the main treaty. After laying down a few conditions of universal application, they provided for special armistices for the various parts of the theatre of war. In accordance with this stipulation separate agreements, negotiated by the generals and admirals on the spot, were entered into for the Manchurian armies and the naval forces. The delegates for the forces confronting one another in Northern Korea were unable to agree, and the matter dragged on, fortunately without bloodshed, till the ratification of the Treaty of Portsmouth rendered temporary arrangements unnecessary.

Lawrence, pp. 564, 565.

It seems superfluous to say that no general can conclude an armistice for forces not under his command, but even within that limit the superior commander or the authorities of the state may refuse to ratify an armistice. There is no difference between truces, suspensions of arms and armistices.

Westlake, vol. 2, p. 92.

An armistice may be general, and valid for all points and lines of the belligerents; or special, that is, referring to certain troops or certain localities only.

* * * * * * *

Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

Lieber, arts. 137, 140.

The term "truce," as used in this Code, means a suspension of hostilities as to a part of the forces on either side, or as to one or more places.

The term "armistice" means a suspension of all hostilities between the belligerents.

A truce may be concluded between the commanders of the belligerent forces respectively, extending to their own commands, without special authority.

An armistice can be concluded only by agreement of the governments of the respective nations.

Field, pp. 505, 506.

The term "suspension of arms" is generally used to designate conventions concluded between commanders of sections of a fighting line for the purpose of interrupting hostilities for a short time, for example, to remove the wounded and the dead.

Swiss Manual, p. 31.

General armistices are of a combined political and military character. They usually precede the negotiations for peace, but may be concluded for other purposes. Due to its political importance, a general armistice is concluded by the Governments concerned or by their commanders in chief, and are ratified in all cases. General armistices are frequently arranged by diplomatic representatives.

A local armistice suspends operations between certain portions of the belligerent forces, or within a designated district of the theatre of operations. A local armistice may be concluded by the military forces only, or by the naval forces only, or between a less number than all of the belligerents at war.

U. S. Manual, pp. 89, 90.

The Hague Rules distinguish only between general and local armistices, apparently comprising both suspensions of arms and partial armistices, under the term "local armistices."

A suspension of arms applies only to the troops under the command of the officers who agree to it.

A general armistice suspends the entire military and naval operations of the belligerents. It is a formal interruption of the war throughout the whole region and theatre of war, although for special reasons small parts of the belligerent forces and small parts in the theatre of war may be excluded from a general armistice.

A partial armistice suspends operations between certain considerable portions only of the belligerent forces, and within a fixed considerable zone only of the region and theatre of war. A partial armistice may be concluded for the military forces only; or for the naval forces only; for cessation of hostilities in the colonies only; for cessation of hostilities between two of the belligerents in case more than two are parties to the war. It is, however, always a condition that a considerable part of the forces and the region of war must be included, and that the cause for which it has been concluded is not only some pressing local interest, as in the case of a suspension of arms, but one of a more general character, such as a general exhaustion of the opposing belligerent forces in one part of the theatre of war; the outbreak of a virulent infectious disease in the opposing camps; an earthquake; or any other cause, the requirements of which can not be satisfied by a mere suspension of arms, but do not demand a general armistice.

Edmonds and Oppenheim, arts. 257, 259, 261, 263.

An armistice, being both political and military in character, is concluded in theory by the commanders-in-chief of the opposing troops, with the authorization of the respective governments.

Jacomet, p. 89.

A general armistice must accordingly be distinguished from a local or particular one. The general armistice extends to the whole seat of war, to the whole army, and to allies; it is therefore a formal cessation of the war. A particular armistice on the contrary relates only to a part of the seat of war, to a single part of the opposing army.

German War Book, p. 141.

Article 37, Annex to Hague Convention IV, 1907, is substantially identical with section 187, Austro-Hungarian Manual, 1913.

ARMISTICE, NOTIFICATION OF—WHEN HOSTILITIES CEASE.

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed.[1]—*Article 38, Regulations, Hague Convention IV, 1907.*

Article 38, dealing with *notification* of an armistice and with *suspension of hostilities*, differs from Brussels Article 49 in admitting that hostilities can be suspended not only from the very moment of notification but after a time agreed upon.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

An armistice must be officially and without delay notified to the competent authorities and to the troops. Hostilities are suspended immediately after the notification.

Art. 49, Declaration of Brussels.

A truce binds the contracting parties from the time it is concluded, but it does not bind the individuals of the nation so as to render them personally responsible for a breach of it, until they have had actual or constructive notice of it. Though an individual may not be held to make pecuniary compensation for a capture made, or destruction of property, after the suspension of hostilities, and before notice of it had reached him, yet the sovereign of the country is bound to cause restoration to be made of all prizes made after the date of a general truce. To prevent the danger and damage that might arise from acts committed in ignorance of the truce, it is common and proper to fix a prospective period for the cessation of hostilities, with a due reference to the distance and situation of places.

Kent, vol. 1, pp. 175, 176.

A truce binds the contracting parties from the time of its conclusion, unless otherwise specially provided; but it does not bind the individuals of the nation so as to make them personally responsible for a breach of it, until they have had actual or constructive notice. If, therefore, individuals, without a knowledge of the suspension of hostilities, kill an enemy or destroy his property, they do not, by such acts, commit a crime, nor are they bound to make pecuniary compensation; but, if prisoners are taken, or prizes captured, the sovereign is under obligation to immediately release the former, and restore the latter. To prevent the danger and damage that might

[1] This article is identical with Article 38, Regulations. Hague Convention II, 1899.

arise from acts committed in ignorance of the truce, it is usual to fix a prospective period for the cessation of hostilities in different places, with due reference to their distance, and the means of communicating with them; * * *

Halleck, p. 656.

A suspension of hostilities binds the contracting parties, and all acting immediately under their direction, from the time it is concluded; but it must be duly promulgated in order to have a force of legal obligation with regard to the other subjects of the belligerent States; so that if, before such notification, they have committed any act of hostility, they are not personally responsible, unless their ignorance be imputable to their own fault or negligence. But as the supreme power of the State is bound to fulfil its own engagements, or those made by its authority, express or implied, the government of the captor is bound, in the case of a suspension of hostilities by sea, to restore all prizes made in contravention of the armistice.

Dana's Wheaton, p. 498.

A truce is binding on the parties to it from the time when they have agreed to its terms, but on private persons from the time when intelligence of it can have reasonably reached them. For injuries inflicted in the interval the sovereign of the injurer is responsible. When a general suspension of arms is agreed upon, it is not unusual to provide that it shall take effect in different portions of the theatre of war or parts of the world at different times, so as to afford opportunity to give notice of it to all who are concerned in, or whose business is affected by, the war.

Woolsey, p. 258.

When a truce affects a considerable area it is not always possible at once to acquaint the whole forces on both sides with the fact that it has been concluded; it is therefore usual to fix different dates for its commencement at different places, the period allowed to elapse before it comes into force at each place being proportioned to the length of time required for sending information. It sometimes happens in spite of this precaution when it is taken, and even when, a limited area being affected, the armistice begins everywhere at the same moment, that acts of hostility are done in ignorance of its having commenced. In such cases no responsibility is incurred by the belligerent who has unintentionally violated the truce on account of destruction of life or property, unless he has been remiss in conveying information to his subordinates; but prisoners and property which have been captured are restored, and partial truces or capitulations made by detached forces which are at variance with the terms of the wider agreement are annulled. Ignorance is considered to exist until the receipt of official notification; if therefore one of the belligerents at a given spot receives notification sooner than the other, and communicates his knowledge to his enemy, the latter is not bound to act upon the information which is presented to him, or before acting may require rigorous proof of its correctness.

Hall, pp. 568, 569.

Spain protested against hostilities being continued by the United States in 1898 while the French Ambassador at Washington was in treaty with the President and Ministers as regards the conclusions of an armistice. The United States Government replied, quite properly, that it was a belligerent's strict right to continue his operations so long as an armistice had not been concluded. Once the armistice is signed, if it is not to commence at a later date, any acts of war done in ignorance of it are null and void, and should be rectified as far as possible.

Spaight, p. 243.

Lines of demarcation.

It must be specially mentioned that for the purpose of preventing the outbreak of hostilities during an armistice it is usual to agree upon so-called lines of demarcation—that is, a small neutral zone between the forces facing each other which must not be entered by members of either force. But such lines of demarcation do not exist, if they are not specially stipulated by the armistice concerned.

Oppenheim, vol. 2, p. 296.

In case the contrary is not stipulated, an armistice commences the very moment the agreement upon it is complete. But often the parties stipulate in the agreement the time from which the armistice shall begin. If this is done in so detailed a manner that the very hour of the commencement is mentioned, no cause for controversy is given. But sometimes the parties fix only the date by stipulating that the armistice shall last from one certain day to another, *e. g.* from June 15 to July 15. In such case the actual commencement is controversial. Most publicists maintain that in such case the armistice begins at 12 o'clock of the night between the 14th and the 15th of June, but Grotius (III. c. 21, §4) maintains that it begins at 12 o'clock of the night between the 15th and the 16th of June. Therefore, to avoid difficulties, agreements concerning armistices ought always to stipulate whether the first day is to be included in the armistice. Be that as it may, when the forces included in an armistice are dispersed over a very large area, the parties very often stipulate different dates of commencement for the different parts of the front, because it is not possible to announce the armistice at once to all the forces included. Thus, for instance, article 1 of the general armistice at the end of the Franco-German War stipulated its immediate commencement for the forces in and around Paris, but that with regard to the other forces its commencement should be delayed three days. Article 38 of the Hague Regulations enacts that an armistice must be notified officially and in good time to the competent authorities and the troops, and that hostilities are suspended immediately after the ratification or at a fixed date, as the case may be.

It sometimes happens that hostilities are carried on after the commencement of an armistice by forces which did not know of its commencement. In such cases the *status quo* at the date of the commencement of armistice has to be re-established so far as possible, prisoners made and enemy vessels seized being liberated, capitulations annulled, places occupied evacuated, and the like; but the parties may, of course, stipulate the contrary.

Oppenheim, vol. 2, pp. 296, 297.

A truce or armistice binds the principals from the time of making the same, but no others until it has been published. Persons ignorantly violating it are not responsible civilly or criminally, but the principal whose duty it was to publish it is bound to make compensation to the party injured.

* * * * * * *

Unless the terms of a truce or armistice indicate a different intention of the parties, the following rules apply:

1. It takes effect from the moment it is agreed on; * * *

Field, pp. 506, 507.

When military operations have taken place through mistake after the conclusion of an armistice, these operations should be annulled; for example, the return of one thousand French prisoners on January 28, 1871, which was effected, it is true, on the faith of false suppositions.

Swiss Manual, p. 32.

An armistice is binding upon the belligerents from the day of the agreed commencement, but the officers of the armies are responsible from the day only when they receive official information of its existence.[1]

U. S. Manual, p. 88.

An armistice binds the contracting authorities from the date at which it is concluded. It must, however, be published in all the places to which it relates, for the purpose of controlling the acts of individuals. It is the duty of the contracting authorities, therefore, to notify an armistice officially and in good time to all commanders and to the troops. Hostilities are suspended immediately after the notification, or at a fixed time, as may be arranged.

Edmonds and Oppenheim, Art. 270.

In order to prevent unintentional violation both parties should notify the armistice as quickly as possible to all, or at any rate to the divisions concerned. Delay in the announcement of the armistice through negligence or bad faith lies, of course, at the door of him whose duty it was to announce it. A violation due to the bad faith of an individual is to be sternly punished. * * *

The commencement of an armistice is, in the absence of an express agreement fixing another time, to date from the moment of its conclusion; the armistice expires at dawn of the day to which it extends.

German War Book, pp. 143, 145.

Article 38, Annex to Hague Convention IV, 1907, is substantially identical with section 188, Austro-Hungarian Manual, 1913.

[1] This article is identical with Lieber, Art. 139.

ARMISTICE FIXES PERMISSIBLE COMMUNICATIONS IN THEATRE OF WAR.

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one belligerent State and those of the other.[1]—*Article 39, Regulations, Hague Convention IV, 1907.*

The wording of Article 39 follows that of Article 50 of Brussels, but expands it and renders it more exact. In effect, it permits an armistice to regulate not only the communications *between* the populations but also those *with* them; at the same time it says that this shall only be 'in the theatre of war'. In the absence of special clauses in the armistice these matters are necessarily governed by the ordinary rules of warfare, especially by those concerning occupation of hostile territory.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held between the populations.

Art. 50, Declaration of Brussels.

In the absence of special stipulations the general prohibition of commercial and personal intercourse which exists during war remains in force during an armistice.

Hall, p. 569.

Article XXXIX has been badly treated by official translators. The French text which was approved at the Hague in 1899, and confirmed in 1907, reads as follows:

"Il dépends des parties contractantes de fixer, dans les clauses de l'armistice, les rapports qui pourraient avoir lieu, sur le théâtre de la guerre, avec les populations et entre elles."

The meaning of this is that given by me, but in Hague I B. B. (p. 332) it is translated—

"It is for the contracting parties to settle, in the terms of the armistice, what communications may be held, on the theatre of war, with the populations and *with each other*."

This incorrect translation is repeated in the British Official *Manual, Laws and Customs of War*, p. 43. The translation given in Hague II B. B. (p. 88) is inexact too, and quite misleading: it is—

"It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held, in the theatre of war, with inhabitants and between the inhabitants of the belligerent State and those of the other."

[1] This article is substantially identical with article 39, Regulations, Hague Convention II, 1899.

Of course, what is intended to be regulated is the intercourse of the population of the *occupied* territory with the population of the country still held by the enemy (in both cases nationals of the enemy State); and also between each belligerent force and the inhabitants of the localities held by the other. See Hague I B. B. p. 148.

Spaight, p. 232, Note.

Article XXXIX lays down that the parties must settle what relations are to exist with and between the populations during an armistice. This provision is rendered necessary by the principle that an armistice suspends fighting but does not affect the state of war. *Neque pax sunt indutiae; cessat enim pugna, bellum autem manet.* In the absence of a special provision, the invading belligerent's war rights as against the population continue unchanged. He can raise requisitions, billet his soldiers, demand services in kind and even levy contributions, and his general martial law regulations remain in full force. And war conditions still hold good as regards the mutual relations of the inhabitants of the districts held by the two belligerents. In the absence of special conditions in the Protocol, the conclusion of the armistice does not free the inhabitants of the occupied territory from their obligation of holding no intercourse with the people in the other belligerent's zone of authority. They may be treated as spies or war-traitors if they offend, just as if hostilities continued. Bluntschli remarks that in the case of a general armistice, which is the preliminary of a treaty of peace, there are grounds for allowing the inhabitants of the territories occupied by the two belligerents to circulate freely, but that there are general military objections to their doing so when the resumption of hostilities is likely He does not, however, appear to have any authority for his rule that "freedom of circulation is presumed if the armistice is a general one and has been concluded for a sufficiently long time." * * * The French *Manuel* (p. 61) lays down that—

If the contracting parties have omitted to arrange as to the mutual relations of the population during the armistice, each belligerent preserves the absolute right to settle the question as he chooses on the territory held by him. An armistice is not a temporary peace; it leaves the state of war in existence; consequently the comings and goings of the inhabitants about the respective positions or within the neutral zone may offer inconveniences and facilitate spying.

Spaight, p. 245; Bluntschli, sec. 693.

It seems to be the intention of the Hague Regulations that the parties should always stipulate those special conditions which they need. Article 39 pronounces this intention regarding intercourse, commercial and otherwise, during armistices, by the following words:—"It is for the contracting parties to settle in the terms of the armistice what communications may be held within the theatre of war with the population and with each other."

It must be specially mentioned that for the purpose of preventing the outbreak of hostilities during an armistice it is usual to agree upon so-called lines of demarcation—that is, a small neutral zone between the forces facing each other which must not be entered by members of either force. But such lines of demarcation do not exist, if they are not specially stipulated by the armistice concerned.

Oppenheim, vol. 2, p. 296.

The difficult subject of the kind and amount of intercourse which may be allowed during an armistice between the invaders and the population in the theatre of war, or between the inhabitants of an occupied territory and their fellow-subjects in adjacent unoccupied districts, should be settled in the terms of the armistice.

Lawrence, p. 566.

This Article 39, Hague Regulations] does not refer to the powers of contracting and suing as settled for each country by the view which its courts take of the legal doctrine of non-intercourse, or, in the case of countries occupied by an enemy, by the first paragraph of H XXIII (h), but to the intercourse in fact which the military authorities will permit.

Westlake, vol. 2, p. 93.

It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any.

If nothing is stipulated the intercourse remains suspended, as during actual hostilities.

Lieber, art. 141.

Intercourse in theater of operations.—H. R. Art. XXXIX. It rests with the contracting parties to settle, in the terms of the armistice, what intercourse may be held in the theater of war with and between the populations.

This translation of the text is copied from that of Messrs. Westlake and Spaight, and is believed to more accurately express the intent of the framers. The original from which this article was probably taken is in G. O. 100 of 1863, art. 141: "It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, it any. If nothing is stipulated the intercourse remains suspended, as during actual hostilities."

Our own official translation is as follows:

"It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theater of war with the inhabitants and between the inhabitants of one belligerent State and those of the other."

The British official translation is as follows:

"It is for the contracting parties to settle, in the terms of the armistice, what commuuications may be held, on the theater of war, with the populations and with each other."

Of course, what is intended to be regulated is the intercourse of the population of the *occupied* territory with the population of the country still held by the enemy (in both cases nationals of the enemy State), and also between each belligerent force and the inhabitants of the localities held by the other.

U. S. Manual, p. 90.

Rule in absence of stipulation.—If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

U. S. Manual, p. 91.

A road or roads should be fixed by which all communications between the two armies must pass during the armistice.

As a state of war continues to exist during an armistice, and as the goings and comings of the inhabitants in the positions of the two armies, and in the neutral zone, may offer inconvenience and facilitate espionage, it rests entirely with the contracting parties to settle in the terms of the armistice how far the relations imposed by war between the belligerent forces and the inhabitants of occupied territory and between the inhabitants of the belligerent countries are modified.

If nothing is said about inhabitants, each party has an absolute right to settle the question according to his own convenience in the territory over which he has power. Usually the intercourse between the two territories remains suspended just as during actual hostilities.

Edmonds and Oppenheim, arts. 291–293.

Article 39, Annex to Hague Convention IV, 1907, is substantially identical with section 189, Austro-Hungarian Manual, 1913.

By the protocol between the United States and Spain signed at Washington August 12, 1898, provision was made for the immediate suspension of hostilities as a preliminary to the conclusion of peace. The blockades were immediately raised, and on August 17, 1898, the Department of State, in response to inquiries made on behalf of the Spanish Government, declared (1) that no obstacle would be interposed to the reestablishment of the postal service by Spanish steamers between Spain on the one side and Cuba, Porto Rico, and the Philippines on the other; (2) that no objection would be made to the importation of supplies in Spanish bottoms to Cuba and the Philippines, but that it had been decided to reserve the importation of supplies from the United States to Porto Rico to American vessels; and (3) that a Spanish steamer, chartered by French merchants and then lying at Havre, would be permitted to proceed to Philadelphia and to take mineral oil for industrial purposes, provided it was not to be transported to Porto Rico. These answers, it was added, were given with the understanding that American vessels would not for the time being be excluded from Spanish ports, as well as upon the understanding that, if hostilities should at any time be renewed, American vessels that might happen to be in Spanish ports would be allowed thirty days in which to load and depart with noncontraband cargo, and that any American vessel which, prior to the renewal of hostilities, should have sailed for a Spanish port would be permitted to enter such port and discharge her cargo, and afterwards forthwith to depart without molestation, and, if met at sea by a Spanish ship, to continue her voyage to any port not blockaded. These conditions were accepted by the Spanish Government, and commercial intercourse was accordingly restored.

Moore's Digest, vol. 7, pp. 332, 333, citing Mr. Moore, Act. Sec. of State to M Cambon, French ambass. Aug. 17, 1898; M. Cambon to Mr. Moore, Sept. 6, 1898.

After the conclusion of the protocol of Aug. 12, 1898, the United States, answering an inquiry made by the French ambassador in behalf of the captain-general of Cuba, stated that it did not, under the existing circumstances, object to officers of the Spanish army returning singly to Spain by way of the United States.

Moore's Digest, vol. 7, p. 333: For. Rel. 1898, 808, 809.

Notwithstanding the signing of the protocol and the suspension of hostilities, a state of war still exists between this country and Spain, as peace can only be declared pursuant to the negotiations between the authorized peace commissioners.

In the distribution of supplies to the destitute inhabitants of Cuba, the commanding officers may use either the officers of the Army or such other volunteer agencies as may be available for the purpose.

The field of their operations is not necessarily restricted to the territory over which they exercise actual control.

Moore's Digest, vol. 7, pp. 333, 334, citing Griggs, At. Gen. Aug. 24, 1898, 22 Op. 190.

EFFECT OF VIOLATION OF ARMISTICE BY PARTIES THERETO.

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately.[1]—*Article 40, Regulations, Hague Convention IV, 1907.*

The subject of the violation of an armistice by one of the parties gave rise to a discussion in the meeting of May 30. Article 51 of the Brussels project confined itself on this subject to saying that a violation of an armistice by one of the parties gives the other the right to denounce it. At the suggestion of Colonel Gross von Schwarzhoff, the subcommission admitted that the right to denounce an armistice would not always be sufficient, and that it was necessary to recognize in the belligerent the right, *in cases of urgency* 'of recommencing hostilities immediately.' On the other hand, the subcommission thought that in order to justify a denouncement of an armistice and, with greater reason, to authorize an immediate resumption of hostilities, there must be a *serious* violation of the armistice; it is for this reason that the new Article 40 differs to that extent from the article accepted at Brussels.

Report to the Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

The violation of the armistice by one of the parties gives the other party the right of denouncing it.

Art. 51, Declaration of Brussels.

Where a truce is granted for a certain specified object, its effects are limited to the purpose mentioned, and if either party should attempt to perform any act to the disadvantage of the other, not comprehended in the object of such truce, this other party has the undoubted right to hinder it by force, notwithstanding the compact. So, where the truce is conditional, and the conditions which have been agreed upon are broken by one party, the truce is no longer binding upon the other. "All truces granted for a certain purpose," says Rutherforth, "are confined to this purpose; and the party who makes use of the cessation of hostilities, to do anything that is not included within this purpose, and that is to the disadvantage of the other party, breaks the truce. For as this purpose is the sole reason of the compact, the right, arising from the compact, can extend no farther than this purpose extends." "And usually," says the same author, "a breach of truce, on one part, will justify the other part in beginning hostilities again before the time of the truce would have otherwise expired."

Halleck, p. 658; Rutherforth, *Institutes*, b. 2, ch. 9, sec. 22.

[1] This article is substantially identical with Article 40, Regulations, Hague Convention II, 1899.

The *second* rule is, that neither party can take advantage of the truce to execute, without peril to himself, what the continuance of hostilities might have disabled him from doing. Such an act would be a fraudulent violation of the armistice. For example:—in the case of a truce between the commander of a fortified town and the army besieging it, neither party is at liberty to continue works, constructed either for attack or defence or to erect new fortifications for such purposes. Nor can the garrison avail itself of the truce to introduce provisions or succors into the town, through the passages or in any other manner which the besieging army would have been competent to obstruct and prevent, had hostilities not been interrupted by the armistice.

Dana's Wheaton, pp. 498, 499.

Disregard of the express or tacit conditions of a truce releases an enemy from the obligation to observe it, and justifies him in recommencing hostilities, without notice if the violation has clearly taken place by the order or with the consent of the state, or in case of doubt after a notice giving opportunity for the disavowal and punishment of the delinquent.

Hall, p. 570.

Article XL has gone through a process of evolution. As originally drafted for the Brussels Conference it read:—

> The violation of the clauses of an armistice, by either one of the Parties releases the other from the obligation of carrying them out, and warlike operations may be immediately resumed.

It was admitted that in terminating an armistice, it was essential that the enemy should not be attacked unawares, and the following clause was substituted for that given above, in preference to one proposed by the German Military delegate which laid down that hostilities might commence in two or three hours—

> The violation of the armistice by either of the Parties gives to the other the right of terminating it (*le denoncer*).

The question was discussed again at the first Hague Conference. It was pointed out that in some cases of violation the aggrieved belligerent cannot fairly be deprived of the right of resuming hostilities at once; a case in point would be where the violation consisted of a treacherous attack. But it was at the same time admitted that to regard trivial violations as a ground for terminating the armistice, and, *a fortiori*, for resuming hostilities at once, was unreasonable, and the Brussels Article was therefore modified and enlarged into the present Article XL.

Spaight, p. 247; Brussels B. B. pp. 177, 209, 210.

Any violation of armistices is prohibited, and, if ordered by the Governments concerned, constitutes an international delinquency. In case an armistice is violated by members of the forces on their own account, the individuals concerned may be punished by the other party in case they fall into its hands. Be that as it may, the question must be answered, what general attitude is to be taken by one party, if the other violates the armistice? No unanimity regarding this point exists among the writers on International Law, many as-

serting that in case of violation the other party may at once, without giving notice, re-open hostilities; others maintaining that such party may not do this, but has only the right to denounce the armistice. The Hague Regulations endeavour to settle the controversy, article 40 enacting that any serious violation of an armistice by one of the parties gives the other the right to denounce it, and even, in case of urgency, to recommence hostilities at once. Three rules may be formulated from this—(1) violations which are not serious do not even give the right to denounce an armistice; (2) serious violations do as a rule empower the other party to denounce only the armistice, but not to recommence hostilities at once without notice; (3) only in case of urgency is a party justified in recommencing hostilities without notice, when the other party has broken an armistice. But since the terms "serious violation" and "urgency" lack precise definition, it is practically left to the discretion of the injured party.

Oppenheim, vol. 2, pp. 297, 298.

If either party violates any express condition, the armistice may be declared null and void by the other.

When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

Lieber, arts. 136, 145, 146.

Any party to a truce or armistice may interfere to prevent any other party from doing any act in violation thereof.

A truce or armistice is terminated, either, * * * by a breach of its stipulations, expressed to be conditions thereof.

Field, p. 508.

To denounce an armistice without some very serious breach, and to surprise the enemy before he can have time to put himself on guard, would constitute an act of perfidy. In the absence of extreme urgency, some delay should be given between the denunciation and the resumption of hostilities.

U. S. Manual, p. 92.

Any serious violation of an armistice by one of the parties gives the other party the right of denouncing it, and in cases of urgency hostilities can even be recommenced at once, although a certain time between giving notice of cessation and resumption of hostilities may have been stipulated for. The violation must, however, be a grave one to justify a denunciation and *a fortiori* to authorize an immediate resumption of hostilities.

A deliberate advance or pushing on of works beyond the line agreed upon, the seizure of any point outside the lines, or the utilization of the occasion to withdraw troops from an unfavorable position commanded by the enemy, or any violation of an express condition would, as a rule, constitute a grave breach.

Edmonds and Oppenheim, arts. 294, 295.

If an agreement is concluded, then both sides must observe its provisions strictly in the letter and the spirit. A breach of the obligations entered into on the one side can only lead to the immediate renewal of hostilities on the other side. A notification is in this case only necessary if the circumstances admit of the consequent loss of time.

German War Book, p. 142.

Article 40, Annex to Hague Convention IV, 1907, is substantially identical with section 190, Austro-Hungarian Manual, 1913.

Aug. 29, 1898, the French embassy at Washington, acting on behalf of the Spanish Government, represented that, according to advices received at Madrid, the insurrection was spreading and becoming more active in the Philippines, and stated that the Spanish Government thought that the situation might be remedied either by placing at the disposal of Spain for use against the insurgents the Spanish troops whom the capitulation at Manila had reduced to inaction, or, if the United States objected to that measure, by the dispatch of troops directly from the Peninsula to the archipelago.

The United States, in view of the fact that Manila was, some time before its surrender, besieged by the insurgents by land while it was blockaded by the forces of the United States by sea, declined to consider the first alternative, and, as to the second, said: "It will be a matter for regret if it should be adopted on the strength of rumors, some of which have been shown to be groundless, while others yet are unconfirmed. The Government of the United States will, through its military and naval commanders in the Philippines, exert its influence for the purpose of restraining insurgent hostilities pending the suspension of hostilities between the United States and Spain. It would be unfortunate if any act should be done by either Government which might, in certain aspects, be inconsistent with the suspension of hostilities between the two nations, and which might necessitate the adoption of corresponding measures of precaution by the other Government.

Moore's Digest, vol. 7, p. 334, citing Mr. Moore, Act. Sec. of State, to Mr. Thiébout, French Chargé, Sept. 5, 1898.

EFFECT OF VIOLATION OF ARMISTICE BY INDIVIDUALS, ON THEIR OWN INITIATIVE.

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained.[1]—*Article 41, Regulations, Hague Convention IV, 1907.*

Article 52, respecting violation of an armistice *by individuals* was not changed and has become the new Article 41. It only provides for 'the punishment of the offenders and, if necessary, compensation for the losses sustained.'

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 148.

A truce is not broken by the acts of private persons, unless they are *ordered* or *ratified* by public authority. But, unless the private offenders are punished or surrendered, and unless the thing seized is restored, or compensated for, it is legally *presumed* that the act of the private offender was duly ordered or ratified. This is the rule of public law.

Halleck, p. 660.

A truce is binding on the parties to it from the time when they have agreed to its terms, but on private persons from the time when intelligence of it can have reasonably reached them. For injuries inflicted in the interval the sovereign of the injurer is responsible.

Woolsey, p. 258.

Violation of the terms of a truce by private persons, acting on their own account, merely gives the right to demand their punishment, together with compensation for any losses which may have been suffered.

Hall, p. 570.

It must be specially observed that violation of an armistice committed by private individuals acting on their own initiative is to be distinguished from violation by members of the armed forces. In the former case the injured party has, according to article 41 of the Hague Regulations, only the right of demanding punishment of the offenders, and, if necessary, indemnity for losses sustained.

Oppenheim, vol. 2, p. 298.

A truce or armistice is not terminated by acts not authorized by the commander, unless they are ratified by a refusal of satisfaction or otherwise.

Field, p. 508.

[1] This article is substantially identical with Article 41, Regulations, Hague Convention II, 1899, and with Article 52, Declaration of Brussels.

By individuals in the sense of the present article [Hague Regulations 41] it is necessary also to include soldiers acting separately and upon their own account. Compare Article 44, letter *d*, of the military penal code.

Swiss Manual, p. 32.

A violation of the terms of the armistice by individuals acting on their own initiative only entitles the injured party to demand punishment of the offenders or, if necessary, compensation for the losses sustained.

U. S. Manual, p. 92.

Soldiers captured in the act of breaking an armistice must be treated as prisoners of war. Such acts do not justify denunciation of the armistice.

U. S. Manual, p. 93.

It is usual to return any prisoners or property that may be captured in any action that takes place by ignorance or accident after the conclusion of an armistice.

The violation of the terms of an armistice by individuals does not entitle the injured party to do more than demand the punishment of the offenders and compensation for the losses sustained, if any. There is no justification in such circumstances for a renewal of hostilities, unless the behaviour of these individuals is approved of or sanctioned by their superiors. If, however, the violation of the armistice by individuals acting on their own initiative be repeated, and if it become evident that the adversary is unable to repress such abuses, there might be no other way, after proper protest, to obtain redress except by denouncing the armistice.

Soldiers captured in the act of breaking an armistice must be treated as prisoners of war, since the responsibility for such a violation lies not with them but with the commander. Should an individual soldier be captured, who without orders committed a hostile act during an armistice, he may conveniently be handed over to his commander for punishment.

Edmonds and Oppenheim, arts. 287, 299, 300.

If the breach of the armistice is the fault of individuals, then the party to whom they belong is not immediately responsible and can not be regarded as having broken faith. If, therefore, the behaviour of these individuals is not favoured or approved by their superiors, there is no ground for a resumption of hostilities. But the guilty persons ought, in such case, to be punished by the party concerned.

Even though the other party does not approve the behaviour of the trespassers but is powerless to prevent such trespasses, then the opponent is justified in regarding the armistice as at an end.

German War Book, p. 142.

Article 41, Annex to Hague Convention IV, 1907, is substantially identical with section 191, Austro-Hungarian Manual, 1913.

MILITARY OCCUPATION, WHEN IT EXISTS.

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.[1]—*Article 42, Regulations, Hague Convention IV, 1907.*

The first article of this chapter (Article 42), defining occupation, is identical with the first article of the Declaration of Brussels. It should be stated that it was adopted unanimously by the subcommission, as also were all or nearly all of the principal articles of this chapter.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 149.

No invaded territory is regarded as conquered until the end of the war; until that time the occupant exercises, in such territory, only a *de facto* power, essentially provisional in character.

Institute, 1880, p. 29.

Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.

Institute, 1880, p. 34.

The government established over an enemy's territory during its military occupation, may exercise all the powers given by the laws of war to the conqueror over the conquered, and is subject to all the restrictions which that code imposes. It is of little consequence whether such government be called a *military* or a *civil* government; its character is the same, and the source of its authority the same: in either case, it is a government imposed by the laws of war, and so far as it concerns the inhabitants of such territory, or the rest of the world, those laws alone determine the legality, or illegality of its acts. * * *

Bouvier defines a conquest to be, "the acquisition of the sovereignty of a country by *force of arms*, exercised by an independent power, which reduces the vanquished to the submission of its empire." It follows, then, that the rights of military occupation extend over the enemy's territory only so far as the inhabitants are vanquished or reduced to submission to the rule of the conqueror. Thus, if a fort, town, city, harbor, island, province, or particular section of country belonging to one belligerent, is forced to submit to

[1] This article is substantially identical with Article 42, Regulations, Hague Convention II, 1899, and with Article 1, Declaration of Brussels.

the arms of the other, such place or territory instantly becomes a conquest, and is subject to the laws which the conqueror may impose on it; although he has not yet acquired the *plenum dominium et ut le*, he has the temporary right of possession and government. As this temporary title derives its validity entirely from the force of arms on the one side, and submission to such force on the other, it necessarily follows that it extends no further, and continues no longer, than such subjugation and submission extend and continue. Thus, if one belligerent take possession of a port, or town, or province of the other, he cannot, therefore, pretend to extend his government and laws over places or provinces which he has not yet reduced to submission, or, by reason of a particular possession, to claim a general control and authority. * * *

It must not be inferred from what has just been said, that the conqueror can have no control or government of hostile territory unless he actually occupies it with an armed force. It is deemed sufficient that it submits to him and recognizes his authority as a conqueror; for conquests are in this way extended over the territory of an enemy without actual occupation with armed force. But so much of such territory as refuses to submit, or to recognize the authority of the conqueror, and is not forcibly occupied by him, cannot be regarded as under his control or within the limits of his conquest; and he therefore cannot pretend to govern it or to claim the temporary allegiance of its inhabitants, or in any way to direct or restrict its intercourse with neutrals. It remains as the territory of its former sovereign,—hostile to him, as a belligerent, and friendly to others, as neutrals. The government of the conqueror being *de facto* and not *de jure*, it must always rest upon the fact of *possession*, which is adverse to the former sovereign, and therefore can never be inferred or presumed. In other words, the rights of the conqueror are those of possession and not of title, and whenever brought in question they must be proved, and cannot be presumed. Not only must the possession be actually acquired, but it must be *maintained*. The moment it is lost, the rights of military occupation over it are also lost.

Halleck, pp. 776–779; Bouvier's *Law Dic.* verb Conquest.

Belligerent occupation implies a firm possession, so that the occupying power can execute its will either by force or by acquiescence of the people, and for an indefinite future, subject only to the chances of war. On the other hand, it implies that the status of war continues between the countries, whether fighting has ceased or not, and that the occupying power has not become the permanent civil sovereign of the country. The effect of such occupation may be considered under several heads.

Dana's Wheaton, p. 436, note 169.

The authority of the conqueror extends no further than his actual power extends. Such persons, such things, and such districts of country, as are under his hand and submit to his authority, or are coerced by it, are subject to his laws. His title rests on force, and is measured by it.

Dana's Wheaton, p. 437, note 169.

We only express our opinion that no definition can confine the notion of occupation within exact limits, and that *the fact* of the exercise of belligerent power near a given place is as safe a rule to go by as any other.

Woolsey, p. 229.

When an enemy enters a hostile country, its advance by ousting the forces of the owner puts the invader into possession of territory, which he is justified in seizing under his general right to appropriate the property of his enemy. But he often has no intention of so appropriating it, and even when the intention exists there is generally a period during which, owing to insecurity of possession, the act of appropriation can not be looked upon as complete. In such cases the invader is obviously a person who temporarily deprives an acknowledged owner of the enjoyment of his property; and logically he ought to be regarded either as putting the country which he has seized under a kind of sequestration, or, in stricter accordance with the facts, as being an enemy who in the exercise of his rights of violence has acquired a local position which gives rise to special necessities of war, and which therefore may be the foundation of special belligerent rights.

Self-evident as may seem to be this view of the position of an invader, when the intention or proved ability to appropriate his enemy's territory is wanting, it was entirely overlooked in the infancy of international law. An invader on entering a hostile country was considered to have rights explicable only on the assumption that ownership and sovereignty are attendant upon the bare fact of possession. Occupation, which is the momentary detention of property, was confused with conquest, which is the definitive appropriation of it. Territory, in common with all other property, was supposed, in accordance with Roman Law, to become a *res nullius* on passing out of the hands of its owner in war; it belonged to any person choosing to seize it for so long as he could keep it. The temporary possession of territory therefore was regarded as a conquest which the subsequent hazards of war might render transient, but which while it lasted was assumed to be permanent. It followed from this that an occupying sovereign was able to deal with occupied territory as his own, and that during his occupation he was the legitimate ruler of its inhabitants.

Down to the middle of the eighteenth century practice conformed itself to this theory. The inhabitants of occupied territory were required to acknowledge their subjection to a new master by taking an oath, sometimes of fidelity, but more generally of allegiance, and they were compelled, not merely to behave peaceably, but to render to the invader the active services which are due to the legitimate sovereign of a state. Frederic II, in his General Principles of War, lays down that 'if an army takes up winter quarters in an enemy's country it is the business of the commander to bring it up to full strength; if the local authorities are willing to hand over recruits, so much the better, if not, they are taken by force;' and the wars of the century teem with instances in which such levies were actually made. Finally, the territory itself was sometimes handed over to a third power while the issue of hostilities remained undecided; as in the case of the Swedish provinces of Bremen and Verden, which

were sold by the King of Denmark during the continuance of war to the Elector of Hanover.

After the termination of the Seven Years' War these violent usages seem to have fallen into desuetude, and at the same time indications appear in the writings of jurists which show that a sense of the difference between the rights consequent upon occupation and upon conquest was beginning to be felt. In saying that a sovereign only loses his rights over territory which has fallen into the hands of an enemy on the conclusion of a peace by which it is ceded, Vattel abandons the doctrine that territory passes as a *res nullius* into the possession of an occupant, and in effect throws back an intrusive foe for a justification of such acts of authority as he may perform within a hostile country upon his mere right of doing whatever is necessary to bring the war to a successful conclusion. But the principle which was thus admitted by implication was not worked out to its natural results. While the continuing sovereignty of the original owner became generally recognized for certain purposes, for other purposes the occupant was supposed to put himself temporarily in his place. The original national character of the soil and its inhabitants remained unaltered; but the invader was invested with quasi-sovereignty, which gave him a claim as of right to the obedience of the conquered population, and the exercise of which was limited only by the qualifications, which gradually became established, that he must not as a general rule modify the permanent institutions of the country, and that he must not levy recruits for his army. The first portion of this self-contradictory doctrine, besides being a commonplace of modern treatises, has, in several countries been expressly affirmed by the courts. In 1808, when the Spanish insurrection against the French broke out, Great Britain, which was then at war with Spain, issued a proclamation that all hostilities against that country should immediately cease. A Spanish ship was shortly afterwards captured on a voyage to Santander, a port still occupied by the French, and was brought in for condemnation. In adjudicating upon the case Lord Stowell observed: 'Under these public declarations of the state establishing this general peace and amity, I do not know that it would be in the power of the Court to condemn Spanish property, though belonging to persons resident in those parts of Spain which are at the present moment under French control, except under such circumstances as would justify the confiscation of neutral property.' In France the Cour de Cassation has had occasion to render a decision of like effect. In 1811, during the occupation of Catalonia, a Frenchman accused of the murder of a Catalan within that province was tried and convicted by the assize Court of the Department of the Pyrénées Orientales. Upon appeal the conviction was quashed, on the ground that the courts of the territory within which a crime is perpetrated have an exclusive right of jurisdiction, subject to a few exceptions not affecting the particular case, that 'the occupation of Catalonia by French troops and its government' by French authorities had not communicated to its inhabitants the character of French citizens, nor to their territory the character of French territory, and that such character could only be acquired by a solemn act of incorporation which had not been gone through.' It is somewhat curious that a principle which has sufficiently seized

upon the minds of jurists to be applied within the large scope of the foregoing cases should not have been promptly extended by international lawyers to cover the whole position of an occupied country relatively to an invader. The restricted admission of the principle is the more curious that the usages of modern war are perfectly consistent with its full application. The doctrine of substituted sovereignty, and with it the corollary that the inhabitants of occupied territory owe a duty of obedience to the conqueror, are no longer permitted to lead to their natural results. They confer no privileges upon an invader which he would not otherwise possess; and they only now serve to enable him to brand acts of resistance on the part of an invaded population with a stigma of criminality which is as useless as it is unjust. Until recently nevertheless many writers, and probably most belligerent governments, have continued to hold that in spite of the unchanged national character of the people and the territory, the fact of occupation temporarily invests the invading state with the rights of sovereignty, and dispossesses its enemy, so as to set up a duty of obedience to the former and of disregard to the commands of the latter. The reasoning or the assumptions upon which this doctrine rests may be stated as follows. The power to protect is the foundation of the duty of allegiance; when therefore a state ceases to be able to protect a portion of its subjects it loses its claim upon their allegiance; and they either directly 'pass under a temporary or qualified allegiance to the conqueror,' or, as it is also put, being able in their state of freedom to enter into a compact with the invader, they tacitly agree to acknowledge his sovereignty in consideration of the relinquishment by him of the extreme rights of war which he holds over their lives and property. It is scarcely necessary to point out that neither of these conclusions is justified by the premises. Supposing a state to have lost its right to the allegiance of its subjects, the bare fact of such loss can not transfer the right to any other particular state. The invaded territory and its inhabitants merely lie open to the acceptance or the imposition of a new sovereignty. To attribute this new sovereignty directly to the occupying state is to revive the doctrine of a *res nullius*, which is consistent only with a complete and permanent transfer of title. On the other hand, while it may be granted that incapacity on the part of a state to protect its subjects so far sets them free to do the best they can for themselves as to render valid any bargain actually made by them, the assertion that any such bargain as that stated is implied in the relations which exist between the invader and the invaded population remains wholly destitute of proof. Any contract which may be implied in these relations can only be gathered from the facts of history, and though it is certain that invaders have habitually exercised the privileges of sovereignty, it is equally certain that invaded populations have generally repudiated the obligation of obedience whenever they have found themselves possessed of the strength to do so with effect. The only understanding which can fairly be said to be recognized on both sides amounts to an engagement on the part of an invader to treat the inhabitants of occupied territory in a milder manner than is in strictness authorized by law, on the condition that, and so long as, they obey the commands which he imposes under the guidance of custom.

In the face of so artificial and inconsistent a theory as that which has just been described it is not surprising that a tendency should have become manifest of late years to place the law of occupation upon a more natural basis. Recent writers adopt the view that the acts which are permitted to a belligerent in occupied territory are merely incidents of hostilities, that the authority which he exercises is a form of the stress which he puts upon his enemy, that the rights of the sovereign remain intact, and that the legal relations of the population towards the invader are unchanged. If the same doctrine has not yet been expressly accepted by most of the great military powers, it is probably not premature to say that the smaller states are unanimous in its support, and the former at the Conference of Brussels at least consented to frame the proposed Declaration in language which implies it.

Looking at the history of opinion with reference to the legal character of occupation, at the fact that the fundamental principle of the continuing national character of an occupied territory and its population is fully established, at the amount of support which is already given to the doctrines which are necessary to complete its application in detail, and to the uselessness of the illogical and oppressive fiction of substituted sovereignty, the older theories may be unhesitatingly ranked as effete, and the rights of occupation may be placed upon the broad foundation of simple military necessity.

Hall, pp. 481–488; 1 Edwards, 182; Ortolan, Dip. de la Mer, liv. II, ch. XIII; American Insurance Co. v. Canter, 1 Peters, 542.

Extent of occupation.

The consequences of occupation being so serious as they in fact are to the inhabitants of an occupied territory, it becomes important to determine as accurately as possible at what moment it begins and ends in a given spot. Up to a certain point there can be no doubt. Within the outposts of an army and along its lines of communication, so long as they are kept open, the exclusive power of the invader is an obvious fact. But in the territory along the flank and in advance of the area thus defined it is an unsettled question under what conditions occupations can exist. According to one view it is complete throughout the whole of a district forming an administrative unit so soon as notice of occupation has been given by placard or otherwise at any spot within it, unless military resistance on the part of duly organized national troops still continues; when occupation is once established it does not cease by the absence of the invading force, so that flying columns on simply passing through a place can render the inhabitants liable to penalties for disobedience to orders issued subsequently when no means of enforcing them exists, or for resistance offered at any later time to bodies of men in themselves insufficient to subdue such resistance; although also occupation comes to an end if the invader is expelled by the regular army of the country, it is not extinguished by a temporary dispossession, effected by a popular movement, even if the national government has been reinstated.

Hall, p. 500.

As a matter of fact, except in a few cases which stand aside from the common instances of extension of the rights of occupation over a district, of which part only has been touched by the

occupying troops, the enforcement of those rights through a time when no troops are within such distance as to exercise actual control, and still more the employment of inadequate forces, constitute a system of terrorism, grounded upon no principle, and only capable of being maintained because an occupying army does not scruple to threaten and to inflict penalties which no government can impose upon its own subjects.

If it were settled that occupation should be considered to exist only together with the power of immediate enforcement of the rights attendant on it, occupation by flying columns, and occupation evidenced by the presence of a plainly inadequate force, would disappear; and with them would disappear the abuses which are now patent. To insist without reservation upon the requirement of present force would not however be altogether just to the invader. It must be admitted that the country which is covered by the front of an army, although much of it may not be strongly held, and though it may in part be occupied only by the presence of a few officials, is as a rule far more effectually under command than territory beyond those limits, even when held by considerable detachments. This is so much the case that in such districts a presumption in favor of efficient control may be said to exist which the occurrence of a raid by national troops, the momentary success of an insurrection, or the presence of guerilla bands, is not enough to destroy. An invader may therefore fairly demand to be allowed to retain his rights of punishment, within the district indicated, until the enemy can offer proofs of success, solid enough to justify his assertion that the occupier is dispossessed. This requirement might probably be satisfied, and at the same time sufficient freedom of action might be secured to the invaded nation by considering that a territory is occupied as soon as local resistance to the actual presence of an enemy has ceased, and continues to be occupied so long as the enemy's army is on the spot; or so long as it covers it, unless the operations of the national or an allied army or local insurrection have re-established the public exercise of the legitimate sovereign authority.

Hall, pp. 503, 504.

Flying columns.

The authority of the occupant may be exercised, by flying columns, beyond the places in which his forces are actually present, or in which the inhabitants have been disarmed.

The occupation of a given district should be, as far as possible, made known to the inhabitants of it, by proclamations posted up at the principal localities, or otherwise. But see Art. 12, *supra*.

It should be noted that all restrictions imposed upon an occupant apply, and with greater force, also to an invader of territory who is not yet in occupation of it.

Holland, p. 52.

Distinction between invasion and occupation.

War law distinguishes between the invasion and the occupation of a hostile territory. If invasion is trespass which is constantly accompanied by assault and battery, occupation is trespass *plus* undisputed possession. Invasion ripens into occupation when the national troops have been completely ousted from the invaded territory and the enemy has acquired control over it. "The state of invasion corresponds to the period of resistance, of combats in which the national army defends, foot by foot, the soil of its country. It ends and gives place to occupation when the defending troops, in despair of maintaining their lines, retreat and go off to seek fresh woods and pastures new for fighting in." During invasion, neither belligerent was complete master of the theatre of war, and if the invader had certain rights as against the population (which I have touched upon in an earlier chapter), those rights did not extend to a general government of the invaded territory and to responsibility for the maintenance of law and order therein. The right and responsibility of the national Government, whose troops were still in part possession of the soil, remained unaltered in these respects. But once the national troops have been displaced, a new set of conditions arise. In the normal case of occupation, the occupied country is cut off, as it were, by a wall of steel and fire, from the nation to which it belongs. Nature abhors a vacuum in political as well as in physical science, and as anarchy would result if there were no Government, war law recognises in the occupying belligerent a right of government which comes very near to the right of sovereignty. At one period of history the military occupant *did* exercise the full rights of sovereignty; he forced the inhabitants to renounce their fealty to their legal sovereign and to supply recruits for the occupying army. * * * But under modern usage and convention the sovereignty of the original owner is regarded as intact. The occupant acquires full sovereignty only when the war ends, and the territory is acquired by him either under the express terms of the treaty of peace, or by virtue of the *debellatio* of the other belligerents, i. e., when the latter is so completely beaten that he gives up the struggle—"throws up the sponge"—and tacitly acquiesces in the wresting from him of the occupied province.

Spaight, p. 321; Pillet, p. 238.

As defined in Article XLII, two distinct ideas underlie the juristic meaning of occupation: (a) the invader must have established his authority; and (b) he must be in a position to enforce it. One sees the latter idea in operation in the refusal of the rights of an occupant to an invader whose possession is disputed; the former, in the refusal of such rights to one who claims them, on *first* entering a hostile province, in virtue of a proclamation previously issued there by his agents. The two ideas are combined to limit the rights of a belligerent in respect to a hostile province through which he has swept hurriedly on his way to a more distant province, but in which he has neither established any kind of military government nor left any force on the spot or within reach to maintain his power.

Spaight, p. 327.

When occupation begins.

"If the invading army," says Professor Pillet, "has secured a success sufficient to oblige the enemy to retire, all the territory which the latter leaves free is susceptible of occupation and it is considered as occupied as soon as the invader, by some positive act, has manifested his intention of exercising his authority there."

Spaight, p. 328; Pillet, p. 240.

Time and circumstances of occupation.

Since an occupant, although his power is merely military, has certain rights and duties, the first question to deal with is, when and under what circumstances a territory must be considered occupied.

Now it is certain that mere invasion is not occupation. Invasion is the marching or riding of troops—or the flying of a military air vessel—into enemy country. Occupation is invasion *plus* taking possession of enemy country for the purpose of holding it, at any rate temporarily. The difference between mere invasion and occupation becomes apparent by the fact that an occupant sets up some kind of administration, whereas the mere invader does not. A small belligerent force can raid enemy territory without establishing any administration, but quickly rush on to some place in the interior for the purpose of reconnoitering, of destroying a bridge or depot of munitions and provisions, and the like, and quickly withdraw after having realised its purpose. Although it may correctly be asserted that, so long and in so far as such raiding force is in possession of a locality and sets up a temporary administration therein, it occupies this locality, yet it certainly does not occupy the whole territory, and even the occupation of such locality ceases the moment the force withdraws.

However this may be, as a rule occupation will be coincident with invasion. The troops march into a district, and the moment they get into a village or town—unless they are actually fighting their way—they take possession of the Municipal Offices, the Post Office, the Police Stations, and the like, and assert their authority there. From the military point of view such villages and towns are now "occupied." Article 42 of the Hague Regulations enacts that territory is considered occupied when it is actually placed under the authority of the hostile army, and that such occupation applies only to the territory where that authority is established and in a position to assert itself. This definition of occupation is not at all precise, but it is as precise as a legal definition of such kind of fact as occupation can be. If, as some publicists maintain, only such territory were actually occupied, in which every part is held by a sufficient number of soldiers to enforce immediately and on the very spot the authority of an occupant, an effective occupation of a large territory would be impossible, since then not only in every town, village, and railway station, but also in every isolated habitation and hut the presence of a sufficient number of soldiers would be necessary. Reasonably no other conditions ought to be laid down as necessary to constitute effective occupation in war than those under which in time of peace a Sovereign is able to assert his authority over a territory. What these conditions are is a question of fact which is to be answered according to the merits of the special case. When the legitimate Sovereign is prevented from exercising his powers and the occupant, being able

to assert his authority, actually establishes an administration over a territory, it matters not with what means and in what ways his authority is exercised. For instance, when in the centre of a territory a large force is established from which flying columns are constantly sent round the territory, such territory is indeed effectively occupied, provided there are no enemy forces present, and, further, provided these columns can really keep the territory concerned under control. Again, when an army is marching on through enemy territory, taking possession of the lines of communication and the open towns, surrounding the fortresses with besieging forces, and disarming the inhabitants in open places of habitation, the whole territory left behind the army is effectively occupied, provided some kind of administration is established, and further provided that, as soon as it becomes necessary to assert the authority of the occupant, a sufficient force can within reasonable time be sent to the locality affected. The conditions vary with those of the country concerned. When a vast country is thinly populated, a smaller force is necessary to occupy it, and a smaller number of centres need be garrisoned than in the case of a thickly populated country.

Oppenheim, vol. 2, p. 206.

When occupation ends.

Occupation comes to an end when an occupant withdraws from a territory or is driven out of it. Thus, occupation remains only over a limited area of a territory if the forces in occupation are drawn into a fortress on that territory and are there besieged by the re-advancing enemy, or if the occupant concentrates his forces in a certain place of the territory, withdrawing before the re-advancing enemy. But occupation does not cease because the occupant, after having disarmed the inhabitants and having made arrangements for the administration of the country, is marching on to overtake the retreating enemy, leaving only comparatively few soldiers behind.

Oppenheim, vol. 2, p. 210.

What constitutes occupation.

These words [of Article 42, Hague Convention IV, 1907] might be more explicit with advantage; but when they are read in the light of the discussions that were carried on at Brussels in 1874 they are fairly clear. They certainly rule out the view acted on by the Germans in their invasion of France in 1870, that a district was occupied if flying columns, advanced parties, or even scouts and patrols, marched through it either without resistance, or after having overcome the resistance of the regularly organized national troops. In such territory the authority of the invaded state is still in existence, and has not been superseded by that of the hostile army. Very likely this will happen almost immediately; but till it has happened the invader has not gained the large rights that belong to a military occupant. In fact occupation on land is analogous to blockade at sea; and as blockades are not recognized unless they are effective, so occupation must rest on effective control. Its rights are founded on mere force, and therefore they cannot extend beyond the area of available force. But the force need not be actually on the spot. The country embraced within the invader's lines may be very extensive, and

the bulk of his troops will, of course, be found on its outer edge opposing the armies of the invaded state. Any territory covered by the front of the invaders should be held to be occupied, but not territory far in advance of their main bodies. The fact that it is penetrated here and there by scouts and advance guards does not bring it under firm control, and therefore cannot support a claim to have deprived the invaded state of all authority therein. But the rights of occupancy, once acquired, remain until the occupier is completely dispossessed. The temporary success of a raid or a popular rising will not destroy them; but if an insurrection wins back and holds the disputed territory, it is absurd to argue, as do some of the great military powers, that they still exist because the occupying forces have not been driven away by regular troops. This is one of the questions untouched by the Hague Regulations, and, therefore, left by the preamble of the fourth Convention of 1907 to usage, humanity, and "the requirements of the public conscience." These combine to declare that rights founded on force expire when that force is overcome, no matter what agency be employed in overcoming it. It is impossible to travel with safety far beyond the statement that belligerent occupation implies, first firm possession, so that the occupying power has the country under its control and can exercise its will therein, and secondly a continuance of the war, so that the invader has not become the sovereign.

Lawrence, pp. 435, 436.

What an invader may do in the territory which he has invaded depends in part on whether his presence in the district in question, combined with his means of influence in that district, amounts to an occupation of it, for with regard to the territory which he occupies and its population he has special rights and duties. H XLII, which reproduces B 1, lays down the principle that occupation in the military sense must be real, a character which it shares with the occupation necessary to confer the ownership of a *res nullius*, although these two senses of the word are distinct and there can be no reasoning from one to the other. It will be a great mitigation of the sufferings of invaded countries if this principle should finally prevail over the practice of presumptive occupation, which Hall sums up as follows from the wars of Napoleon and that of 1870. According to the view embodied in that practice, he says, occupation "is complete throughout the whole of a district forming an administrative unit so soon as notice of it has been given by placard or otherwise at any spot within the district, unless military resistance on the part of duly organised national troops still continues. When occupation is once established it does not cease by the absence of the invading force, so that flying columns on simply passing through a place can render the inhabitants liable to penalties for disobedience to orders issued subsequently when no means of enforcing them exists, or for resistance offered at any later time to bodies of men in themselves insufficient to subdue such resistance. Although also occupation comes to an end if the invader is expelled by the regular army of the country, it is not extinguished by a temporary dispossession effected by a popular movement, even if the national government has been reinstated." And he adds that "the administrative unit adopted by the Germans in 1870, as that the whole of which was affected by

notice of occupation given at any spot within it, was the French canton," of which "the average size is about 72 square miles." Excessive however as are such claims, it must be admitted that difficulty will sometimes arise in deciding on the reality of occupation on the flanks or in the rear of an invading army. In trying to express more precisely the spirit of B 1 or H XLII we can scarcely do better than again quote Hall, who says that the just requirements of an invader "might probably be satisfied, and at the time sufficient freedom of action might be secured to the invaded nation, by considering that a territory is occupied as soon as local resistance to the actual presence of an enemy has ceased, and continues to be occupied so long as the enemy's army is on the spot; or so long as it covers it, unless the operations of the national or an allied army, or local insurrection, have re-established the public exercise of the legitimate sovereign authority."

Westlake, vol. 2, p. 93; Hall, sec. 161.

Occupation question of fact.—Military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded Government incapable of publicly exercising its authority, and that the invader is in position to substitute and has substituted his own authority for that of the legitimate Government in the territory invaded.

U. S. Manual, p. 105.

Does not transfer sovereignty.—Being an incident of war, military occupation confers upon the invading force the right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and is considered legitimate by reason of the necessity for maintaining law and order, indispensable for both the inhabitants and for the occupying force.

U. S. Manual, p. 105.

Distinguished from invasion.—The state of invasion corresponds with the period of resistance. Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation. He may send small raiding parties or flying columns, reconnoitering detachments, etc., into or through a district where they may be temporarily located and exercise control, yet when they pass on it can not be said that such district is under his military occupation.

U. S. Manual, p. 106.

Distinguished from subjugation or conquest.—Subjugation and conquest imply the annexation of the property or territory by the conqueror through the treaty of peace, and with it the sovereignty. Military occupation is based upon the fact of possession and is essentially provisional until the conclusion of peace or the annihilation of the adversary, when sovereignty passes and military occupation technically ceases

U. S. Manual, p. 106.

Presence of invested fort immaterial.—The existence of a fort or defended area within the occupied district, provided such place is invested, does not render the occupation of the remainder of the district ineffective, nor is the consent of the inhabitants in any manner essential.

U. S. Manual, p. 107.

Proclamation of occupation.—In a strict legal sense no proclamation of military occupation is necessary. On account of the special relations established between the inhabitants of the occupied territory and the occupant, by virtue of the presence of the invading force, the fact of military occupation, with the extent of territory affected by the same, should be made known. The practice in this country is to make this fact known by proclamation.

U. S. Manual, p. 107.

According to these Rules, "Territory is considered occupied when actually placed under the authority of the hostile army. The occupation extends only to the territories where such authority has been established and is in a position to assert itself."

This definition is not precise, but it is as precise as a legal definition of such a kind of fact can be, and there should, in practice, be no great difficulty in understanding it.

Invasion is not necessarily occupation, although as a rule occupation will be coincident with invasion.

Edmonds and Oppenheim, arts. 341–343.

Occupation must be actual and effective, that is, there must be more than a mere declaration or proclamation that possession has been taken, or that there is the intention of taking possession.

Edmonds and Oppenheim, art. 344.

It has been proposed as a test of occupation that two conditions should be satisfied: firstly, that the legitimate Government should, by the act of the invader, be rendered incapable of publicly exercising its authority; secondly, that the invader should be in a position to substitute his own authority for that of the legitimate Government. These conditions afford in most cases a useful guide, but it must not be forgotten that Article 42 of the Hague Rules stipulates distinctly that the authority of the occupant must actually have been established.

Edmonds and Oppenheim, art. 346.

This is the case when the lawful government is rendered powerless, through the act of the invader, to exercise its authority publicly in the territory and when the invader is in a position to effectively substitute therein the exercise of his own authority. A transient disturbance provoked by the enemy can not cause the occupation to cease.

Jacomet, p. 68.

Occupation should be effective and the most certain sign of this fact is the abandonment, on the part of the vanquished, of the exercise of the right of sovereignty in the country occupied by the enemy, and the physical impossibility of resuming at any moment whatever the exercise of these rights.

Practically, all enemy territory will be considered as effectively occupied by a French Army upon which a supply service shall have been organized in the rear of the army of invasion.

Occupation should be preceded by a notification which may take the form of proclamations posted in communes, or circulars addressed to the local authorities, of notices inserted in the local press. These publications must enumerate the acts from which the inhabitants are to refrain and the penalties imposed for the corresponding infractions.

An indication to the civil authorities of the taking possession of a supporting region, prescribed by Article 50 of the decree of March 25, 1908, on services in the rear, followed by notification of the acts forbidden the inhabitants, will be for the French Army the usual mode of notification of occupation.

Jacomet, p. 69.

These are the chief principles for the administration of an occupied country or any portion of it. From them emerges quite clearly on the one hand the duties of the population, but also on the other the limits of the power of the conqueror. But the enforcement of all these laws presupposes the actual occupation of the enemy's territory and the possibility of really carrying them out. So-called "fictitious occupations," such as frequently occurred in the eighteenth century and only existed in a declaration of the claimant, without the country concerned being actually occupied, are no longer recognized by influential authorities on the law of nations as valid. If the conqueror is compelled by the vicissitudes of war to quit an occupied territory, or if it is voluntarily given up by him, then his military sovereignty immediately ceases and the old State authority of itself again steps into its rights and duties.

German War Book, p. 185.

Article 42, Annex to Hague Convention IV, 1907, is substantially identical with section 192, Austro-Hungarian Manual, 1913.

The American Ins. Co. v. Canter, 1 Peters, 511.

In considering the status of the people of Florida after the cession of that territory to the United States, the Court said: "The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace."

Thirty Hogsheads of Sugar v. Boyle, 9 Cranch, 191.

The Court said:

"Some doubt has been suggested whether Santa Cruz, while in the possession of Great Britain, could properly be considered as a British island. But for this doubt there can be no foundation. Although acquisitions made during war are not considered as permanent until confirmed by treaty, yet to every commercial and belligerent purpose, they are considered as a part of the domain of the conqueror, so long as he retains the possession and government of them. The island of Santa Cruz, after its capitulation, remained a British island until it was restored to Denmark."

DUTIES OF OCCUPANT AS TO PUBLIC ORDER AND SAFETY.

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.[1]—*Article 43, Regulations, Hague Convention IV, 1907.*

Article 43 condenses into a single text articles 2 and 3 of the Brussels Declaration. The new wording was proposed by Mr. Bihourd, the Minister of France at The Hague, and one of the delegates of his Government. The last words of article 43, where it is said that the occupant shall restore or insure order 'while respecting, unless absolutely prevented, the laws in force in the country,' really give all the guaranties that the old article 3 could offer and do not offend the scruples of which Mr. Beernaert spoke in his address, referred to at the beginning of this report, which had led him to propose at first that article 3 be omitted.

The omission of article 4 of the Brussels Declaration was unanimously voted for at the instance of Mr. Beernaert, vigorously supported by Mr. van Karnebeek. The first delegate of the Netherands stated that he opposed any provision that might seem directly or indirectly to give the public officers of an invaded country any authority to place themselves at the service of the invader. It was not denied, however, that certain officers, particularly municipal officers, might sometimes best perform their duty, in a moral sense at least, towards their people if they remained at their posts in the presence of the invader.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 149.

The authority of the legitimate power being suspended and having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and insure, as far as possible, public order and safety.

Art. 2, Declaration of Brussels.

With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend, or replace them unless necessary.

Art. 3, Declaration of Brussels.

The occupant should take all due and needful measures to restore and insure public order and public safety.

Institute, 1880, p. 35.

[1] This article is substantially identical with article 43, Regulations, Hague Convention II, 1899.

The occupant should maintain the laws which were in force in the country in time of peace, and should not modify, suspend, or replace them unless necessary.

Institute, 1880, p. 35.

In case of urgency, the occupant may demand the cooperation of the inhabitants, in order to provide for the necessities of local administration.

Institute, 1880, p. 35.

The civil functionaries and employees of every class who consent to perform their duties are under the protection of the occupant.

They may always be dismissed, and they always have the right to resign their places.

They should not be summarily punished unless they fail to fulfill obligations accepted by them, and should be handed over to justice only if they violate these obligations.

Institute, 1880, p. 35.

The inhabitants of an occupied territory who do not submit to the orders of the occupant may be compelled to do so.

The occupant, however, can not compel the inhabitants to assist him in his works of attack or defense, or to take part in military operations against their own country.

Institute, 1880, pp. 35, 36.

The municipal laws of a conquered territory, or the laws which regulate private rights, continue in force during military occupation, except so far as they are suspended or changed by the acts of the conqueror. Important changes of this kind are seldom made, as the conqueror has no interest in interfering with the municipal laws of the country which he holds by the temporary rights of military occupation. He nevertheless has all the powers of a *de facto* government, and can, at his pleasure, either change the existing laws, or make new ones. Such changes, however, are, in general, only of a temporary character, and end with the government which made them. On the confirmation of the conquest by a treaty of peace, the inhabitants of such territory are, as a general rule, remitted to the municipal laws and usages which prevailed among them prior to the conquest. Neither the civil nor the criminal jurisdiction of the conquering state is considered, in international law, as extending over the conquered territory during military occupation. Although the national jurisdiction of the conquered power is replaced by that of military occupation, it by no means follows that this new jurisdiction is the same as that of the conquering state. On the contrary, it is usually very different in its character, and always distinct in its origin. Hence, the ordinary jurisdiction of the conquering state does not extend to actions, whether civil or criminal, originating in the occupied territory.

Halleck, p. 781.

How then are crimes to be punished which are committed in territory occupied by force of arms, but which are not of a military character nor provided for in the military code of the conquering state?

To solve this question it will be sufficient to recur to the principles already laid down. Although the laws and jurisdiction of the conquering state do not extend over such foreign territory, yet the laws of war confer upon it ample power to govern such territory, and to punish all offenses and crimes therein by whomsoever committed. The trial and punishment of the guilty parties may be left to the ordinary courts and authorities of the country, or, they may be referred to special tribunals organized for that purpose by the government of military occupation; and where they are so referred to special tribunals, the ordinary jurisdiction is to be considered as suspended *quoad hoc.* It must be remembered that the authority of such tribunals has its source, not in the laws of the conquering nor in those of the conquered state, but, like any other powers of the government of military occupation, in the laws of war; and, in all cases not provided for by the laws actually in force in the conquered territory, such tribunals must be governed and guided by the principles of universal public jurisprudence.

Halleck, p. 782.

Rights and duties of conqueror and conquered.

As the [occupied] State has not been able to protect its citizens, its claim upon their allegiance is suspended during hostile occupation. They not only cannot be afterwards punished for having acquiesced in the authority that has gained control over the place, but they cannot be compelled to pay to their government, after restoration, taxes or excise or customs duties for the time the place was in the enemy's possession. (United States *v.* Rice (the Castine Case,) Wheaton's Rep. iv. 246. Fleming *v.* Page, Howard, ix. 663. Cross *v.* Harrison, Howard, xvi. 164.) The people of the conquered place who submit to the conqueror and remain, as non-combatants, owe a temporary and qualified allegiance to the occupying power. The commander of the occupying forces has a right to require of the inhabitants an oath or parole, not inconsistent with their general and ultimate allegiance to their own State. He may require of them an oath or promise to remain quiet, and make no attempt to disturb his authority, and to submit to such laws as shall be made for the government of the place. He may require them to do police service, but not to take arms against their own country. Indeed, in the absence of any such formal promise, it is understood in modern times, that, by taking the attitude of non-combatants and submitting to the authority, the citizen holds himself out as one not requiring restraint, and is treated as having given an implied parole to that effect. Combatants, or persons who, by resistance, or attempts at resistance, or by refusal to submit to the authority, take the attitude of combatants, may be placed under restraint as prisoners of war. Modern writers have gone so far as to contend, that citizens, who come under this temporary and partial allegiance to the conqueror, cannot throw it off and resist the authority by force, except on grounds analogous to those which justify revolution. If the occupying power does not do its part to protect the citizen in his person or property, or makes unreasonable and tyrannical exactions, these may constitute, as in a case of revolution, ethical justification for a resort to stratagem or force to overthrow the government.

Whether the laws which the occupying power establishes over a conquered place are those of the conquering country, or such other

and different laws as that power shall choose to establish, is a matter of internal and not of international law. Under the Constitution of the United States, a place so held is not a State of the Union, and the general laws of the Union do not, *proprio vigore,* extend over it; but it is simply a district held by the military power, for the belligerent purposes of the Union, and is subject to such laws as the belligerent authorities of the Union may establish. Congress is considered as having a general authority to make laws for the government of such places, under its authority over martial and military law; and, in the absence of Acts of Congress, the President, as commander-in-chief, establishes such rules as he sees fit. (Halleck's Intern. Law, 784–6. Fleming *v.* Page, How. ix. 615. Cross *v.* Harrison, How. xvi. 164.) * * * Still, it is not to be supposed that the citizens of such a place are citizens of England, Scotland, or Ireland, or have political privileges as such, as a right to vote, or to be represented in Parliament. Foreign nations must accept the *de facto* condition of the place, and comply with such commercial and police regulations, and pay such duties, as the occupying power shall establish, if they choose to trade there; and treaty rights bearing on those subjects, whether made with the conquering or the conquered State, are inapplicable.

Dana's Wheaton, pp. 436, 437, note 169.

In case of belligerent occupation, as in case of completed conquest, the private laws of the former state subsist, unless they are suspended by the act of the occupying power, and for the same reason,—that some laws must exist, to regulate private rights and relations, and the persons and things which are their subjects remain unchanged: therefore the laws are permitted to continue until a change is expressly made.

Dana's Wheaton, p. 437, note 169.

Regulation of trade.

The right of the military occupant to regulate, as an incident of military government, trade with the inhabitants of the territory subject to his jurisdiction is well established by the laws and usages of nations.

Moore's Digest, vol. 7, p. 273, citing Magoon's Reports, 302.

If occupation is merely a phase in military operations, and implies no change in the legal position of the invader with respect to the occupied territory and its inhabitants, the rights which he possesses over them are those which in the special circumstances represent his general right to do whatever acts are necessary for the prosecution of his war; in other words, he has the right of exercising such control, and such control only within the occupied territory as is required for his safety and the success of his operations. But the measure and range of military necessity in particular cases can only be determined by the circumstances of those cases. It is consequently impossible formally to exclude any of the subjects of legislative or administrative action from the sphere of the control which is exercised in virtue of it; and the rights acquired by an invader in effect amount to the momentary possession of all ultimate legislative and executive power. On occupying a country an invader at once invests himself with absolute

authority; and the fact of occupation draws with it as of course the substitution of his will for previously existing law whenever such substitution is reasonably needed, and also the replacement of the actual civil and judicial administration by military jurisdiction. In its exercise, however, this ultimate authority is governed by the condition that the invader, having only a right to such control as is necessary for his safety and the success of his operations, must use his power within the limits defined by the fundamental notion of occupation, and with due reference to its transient character.

Hall, pp. 488, 489.

The invader deals freely with the relations of the inhabitants of the occupied territory towards himself. He suspends the operation of the laws under which they owe obedience to their legitimate ruler, because obedience to the latter is not consistent with his own safety; for his security also, he declares certain acts, not forbidden by the ordinary laws of the country, to be punishable; and he so far suspends the laws which guard personal liberty as is required for the summary punishment of any one doing such acts. All acts of disobedience or hostility are regarded as punishable; and by specific rules the penalty of death is incurred by persons giving information to the enemy, or serving as guides to the troops of their own country, by those who while serving as guides to the troops of the invader intentionally mislead them, and by those who destroy telegraphs roads, canals, or bridges, or who set fire to stores or soldiers' quarters. If the inhabitants of the occupied territory rise in insurrection, whether in small bodies or *en masse*, they can not claim combatant privileges until they have displaced the occupation, and all persons found with arms in their hands can in strict law be killed, or if captured be executed by sentence of court-martial. Sometimes the inhabitants of towns or districts in which acts of the foregoing nature have been done, or where they are supposed to have originated, are rendered collectively responsible, and are punished by fines or by their houses being burned. In 1871 the German governor of Lorraine ordered, "in consequence of the destruction of the bridge of Fontenoy, to the east of Toul, that the district included in the Governor-Generalship of Lorraine shall pay an extraordinary contribution of 10,000,000 francs by way of fine," and announced that "the village of Fontenoy has been immediately burned." In October 1870 the general commanding in chief the second German Army issued a proclamation declaring that all houses or villages affording shelter to Francs Tireurs would be burned, unless the Mayor of the Commune informed the nearest Prussian officer of their presence immediately on their arrival in the Commune; all Communes in which injury was suffered by railways, telegraphs, bridges, or canals, were to pay a special contribution, notwithstanding that such injury might have been done by others than the inhabitants, and even without their knowledge. A general order affecting all territory occupied or to be occupied had been already issued in August, under which the Communes to which any persons doing a punishable act belonged, as well as those in which the act was carried out, were to be fined for each offense in a sum equal to the yearly amount of their land-tax.

Hall, pp. 490, 491.

It has been seen that the authority of the local civil and judicial administration is suspended as of course so soon as occupation takes place. It is not usual however for an invader to take the whole administration into his own hands. Partly because it is more easy to preserve order through the agency of the native functionaries, partly because they are more competent to deal with the laws which remain in force, he generally keeps in their posts such of the judicial and of the inferior administrative officers as are willing to serve under him, subjecting them only to supervision on the part of the military authorities, or of superior civil authorities appointed by him. He may require persons so serving him to take an oath engaging themselves during the continuance of the occupation to obey his orders, and not to do anything to his prejudice; but he can not demand that they shall exercise their functions in his name. The former requirement is merely a precaution which it is reasonable for him to take in the interests of his own safety; the latter would imply a claim to the possession of rights of sovereignty, and would therefore not be justified by the position which he legally holds within the occupied territory.

Hall, pp. 494–496.

It has been already mentioned that belligerents have commonly assumed, and that some writers still maintain, that it is the duty of the inhabitants of an occupied country to obey the occupying sovereign, and that the fact of occupation deprives the legitimate sovereign of his authority. It has been shown, however, upon the assumption that the rights of an occupant are founded only on military necessity, that this view of the relation between the invader and the invaded population, and between the latter and their government, is unsound. The invader succeeds in a military operation, in order to reap the fruits of which he exercises control within the area affected; but the right to do this can no more imply a correlative duty of obedience than the right to attack and destroy an enemy obliges the latter to acquiesce in his own destruction. The legal and moral relation therefore of an enemy to the government and people of an occupied territory are not changed by the fact of occupation. He has gained certain rights; but side by side with these the rights of the legitimate sovereign remain intact. The latter may forbid his officials to serve the invader, he may order his subjects to refuse obedience, or he may excite insurrections. So also the inhabitants of the occupied territory preserve full liberty of action. Apart from an express order from their own government they are not called upon to resist the invader, or to neglect such commands as do not imply a renunciation of their allegiance; but on the other hand they may rise against him at any moment, on the full understanding that they do so at their own peril.

Hall, pp. 498, 499.

Though the fact of occupation imposes no duties upon the inhabitants of the occupied territory the invader himself is not left equally free. As it is a consequence of his acts that the regular government of the country is suspended, he is bound to take whatever means are required for the security of public order; and as his presence, so long as it is based upon occupation, is confessedly temporary, and

his rights of control spring only from the necessity of the case, he is also bound, over and above the limitations before stated, to alter or override the existing laws as little as possible, whether he is acting in his own or the general interest.

Hall, p. 499.

It may be necessary to vary the criminal, administrative, and other branches of Public Law, but hardly to interfere with the rules of Private Law, e. g., as to property, contracts, or family relations.

The occupant will often be glad to avail himself of the services of the native local authorities, so far as he can trust them, in case, and so long as, they are willing to continue in office.

In addition to so much of the native law as he considers suitable to be enforced, the occupant will also administer "martial law"; as to which see articles 4–13, *supra*.

Holland, p. 53.

Until the war ends, "the invader is not juridically substituted for the legal government, for the government, that is, of the invaded State. He is not sovereign of the country. His powers are limited to the necessities of war. When these are respected and satisfied, the invader must, for the rest, leave in force the existing laws and usages. But, by reason of his actual mastery, he assumes the obligations of maintaining order, of allowing the social life of the inhabitants to continue unimpeded, and of respecting their persons. On the other hand, the occupant's duty to himself gives him the right to take all measures requisite for his security, to suppress any resistance which might endanger the advantages he has won."

Spaight, p. 322; Bonfils, sec. 1159.

The principle underlying these modern rules is that, although the occupant does in no wise acquire sovereignty over such territory through the mere fact of having occupied it, he actually exercises for the time being a military authority over it. As he thereby prevents the legitimate sovereign from exercising his authority and claims obedience for himself from the inhabitants, he has to administer the country not only in the interest of his own military advantage, but also, so far as possible at any rate, for the public benefit of the inhabitants. Thus, the present international law not only gives certain rights to an occupant, but also imposes certain duties upon him.

Oppenheim, vol. 2, p. 206.

As the occupant actually exercises authority, and as the legitimate government is prevented from exercising its authority, the occupant acquires a temporary right of administration over the respective territory and its inhabitants. And all steps he takes in the exercise of this right must be recognized by the legitimate government after occupation has ceased. This administration is in no wise to be compared with ordinary administration, for it is distinctly and precisely military administration. In carrying it out the occupant is, on the one hand, totally independent of the constitution and the laws of the respective territory, since occupation is an aim of warfare, and since the maintenance and safety of his forces and the purpose

of war stand in the foreground of his interest and must be promoted under all circumstances and conditions. But, although as regards the safety of his army and the purpose of war the occupant is vested with an almost absolute power, he is not the sovereign of the territory, and therefore has no right to make changes in the laws or in the administration except those which are temporarily necessitated by his interest in the maintenance and safety of his army and the realization of the purpose of war. On the contrary, he has the duty of administering the country according to the existing laws and the existing rules of administration; he must insure public order and safety, must respect family honor and rights, individual lives, private property, religious convictions and liberty.

Oppenheim, vol. 2, p. 210.

Treatment of officials.

As through occupation authority over the territory actually passes into the hands of the occupant, he may for the time of his occupation depose all government officials and municipal functionaries that have not withdrawn with the retreating enemy. On the other hand, he must not compel them by force to carry on their functions during occupation, if they refuse to do so, except where a military necessity for the carrying on of a certain function arises.

Oppenheim, vol. 2, p. 213.

Courts of justice.

The particular position which courts of justice have nowadays in civilized countries, makes it necessary to discuss their position during occupation. There is no doubt that an occupant may suspend the judges as well as other officials. However, if he does suspend them, he must temporarily appoint others in their place. If they are willing to serve under him, he must respect their independence according to the laws of the country. Where it is necessary, he may set up military Courts instead of the ordinary Courts. In case and in so far as he admits the administration of justice by the ordinary Courts, he may nevertheless, so far as it is necessary for military purposes or for the maintenance of public order and safety, temporarily alter the laws, especially the Criminal Law, on the basis of which justice is administered, as well as the laws regarding procedure. He has, however, no right to constrain the Courts to pronounce their verdicts in his name, although he need not allow them to pronounce verdicts in the name of the legitimate Government. A case that happened during the Franco-German War may serve as an illustration. In September, 1870, after the fall of the Emperor Napoleon and the proclamation of the French Republic, the Court of Appeal at Nancy pronounced its verdicts under the formula "In the name of the French Government and People." Since Germany had not yet recognized the French Republic, the Germans ordered the Court to use the formula "In the name of the High German Powers occupying Alsace and Lorraine," but gave the Court to understand that, if the Court objected to this formula, they were disposed to admit another, and were even ready to admit the formula "In the name of the Emperor of the French," as the Emperor had not abdicated. The Court, however, refused to pronounce its verdict otherwise than "In the name of the French Government and

People," and, consequently, suspended its sittings. There can be no doubt that the Germans had no right to order the formula, "In the name of the High German Powers, etc.," to be used, but they were certainly not obliged to admit the formula preferred by the Court; and the fact that they were disposed to admit another formula than that at first ordered ought to have made the Court accept a compromise. Bluntschli (§ 547) correctly maintains that the most natural solution of the difficulty would have been to use the neutral formula "In the name of the law."

Oppenheim, vol. 2, pp. 214, 215.

The peaceful inhabitants of an invaded country, who are content to go about their ordinary avocations and submit to the lawful demands of the invaders, have a right to protection.

Lawrence, p. 417.

While the occupation lasts, the occupant has duties as well as rights. He must substitute his own authority for that of the State he has dispossessed, maintain order, insure safety, and administer the laws with such alterations, if any, as he may deem it necessary to make by virtue of his military supremacy.

Lawrence, p. 436.

The word "safety," used in the official English translation [of article 43, Hague Regulations, 1907] does not adequately render the *vie publique* of the original, which describes the social and commercial life of the country.

Westlake, vol. 2, p. 95.

Occupancy distinguished from conquest.

Down to the middle of the eighteenth century the authority of an invader was not distinguished from conquest. The doctrine had not been established that the sovereignty over a territory and its population is not transferred till the end of a war, when it may pass by cession in the treaty of peace, or by conquest if all contest ceases and the war comes to an end without such a treaty, as happens when one of the belligerent States is extinguished. The documents drawn up by local authorities in the ordinary course of administration were expressed in the name of one prince or another, as the tide of invasion and recovery swayed to and fro over the locality. Frederick the Great taught that the business of an invader in winter quarters was to raise recruits from the country by compulsion, and that was his practice as well as that of other commanders in the War of the Austrian Succession and in the Seven Years War. But now that a distinction between conquest and military occupation is firmly drawn the source of an invader's authority can not be looked for in a transfer of that of the territorial sovereign. It is a new authority based on the necessities of war and on the duty which the invader owes to the population of the occupied districts.

Westlake, vol. 2, pp. 95, 96.

The modern doctrine appears in Vattel, liv. 3, §197, in a hesitating form, since he says that the acquisition by the invader is not complete, his property does not become stable and perfect, but by the treaty of peace or the extinction of the invaded State. It appears fully in the decision of Lord Stowell that the inhabitants of a part of

a friendly country (Spain) which the common enemy has occupied are not enemies as owners of ships; *The Santa Anna*, Edwards 180; and in the official French *Manuel de droit international pour les officiers de l'armée de terre*, which says, page 93, that "*l'occupation est simplement un état de fait qui produit les conséquences d'un cas de force majeure; l'occupant n'est pas substitué en droit au gouvernment légal.*"

Westlake, vol. 2, pp. 95, 96, Note.

Law to be enforced.

H XLIII indicates that the law to be enforced by the occupant consists of, first, the territorial law in general, as that which stands to the public order and social and commercial life of the district in a relation of mutual adaptation, so that any needless displacement of it would defeat the object which the invader is enjoined to have in view, and secondly, such variations of the territorial law as may be required by real necessity and are not expressly prohibited by any of the further rules which will come before us. Such variations will naturally be greatest in what concerns the relation of the communities and individuals within the district to the invading army and its followers, it being necessary for the protection of the latter, and for the unhindered prosecution of the war by them, that acts committed to their detriment shall not only lose what justification the territorial law might give them as committed against enemies, but shall be repressed more severely than the territorial law would repress acts committed against fellow subjects. Indeed the entire relation between the invaders and the invaded, so far as it may fall within the criminal department whether by the intrinsic nature of the acts done or in consequence of the acts done or in consequence of the regulations made by the invaders, may be considered as taken out of the territorial law and referred to what is called martial law.

Westlake, vol. 2, pp. 96, 97.

Lawmaking.

To the extent to which the legal power of the occupant is admitted he can make law for the duration of his occupation. Like any other legislator, he is morally subject to the duty of giving sufficient notice of his enactments or regulations, not indeed so as to be debarred from carrying out his will without notice, when required by military necessity and so far as practically carrying out his will can be distinguished from punishment, but always remembering that to punish for breach of a regulation a person who was justifiably ignorant of it would be outrageous. But the law made by the occupant within his admitted power, whether morally justifiable or not, will bind any member of the occupied population as against any other member of it, and will bind as between them all and their national government, so far as it produces an effect during the occupation. When the occupation comes to an end and the authority of the national government is restored, either by the progress of operations during the war or by the conclusion of a peace, no redress can be had for what has been actually carried out but nothing further can follow from the occupant's legislation. A prisoner detained under it must be released, and no civil right conferred by it can be further enforced. The enemy's law depends on him for enforcement

as well as for enactment. The invaded State is not subject to the indignity of being obliged to execute his commands. This however, if the occupation has been prolonged, may be subject to an exception which will be best understood from an example. The French island of Guadeloupe, in the West Indies, was occupied by the British in 1810, and was restored to France only by the treaty of Stockholm in 1814, Great Britain having ceded her rights in it to Sweden in 1813. The French court decided that certain benevolent institutions (*bureaux de bienfaisance*), founded by the inhabitants with the aid of the British Government, retained the character of public establishments. "Progress," the court said, "being the supreme law of societies, a conqueror who is *de facto* sovereign fills the place of the legitimate sovereign, and is bound to satisfy in his stead the needs of the country which he occupies; and the measures which he takes with that view have the same force and stability as if they had been taken by the legitimate authority itself. * * * The inhabitants, in order to found benevolent institutions with the aid of public authority, were not bound to wait indefinitely for the chances of war or a peace to replace them under their legitimate government."

Westlake, vol. 2, pp. 97, 98; *Beauvarlet c. Bureau de bienfaisance de la Pointe-à-Pitre*, Guadalupe, 31 August, 1869, confirmed by *Cassation Req.* 6 January, 1873; Dalloz, 1873, 1, p. 115; 1 Clunet, 243.

Martial law.

It remains to explain more fully the martial law which has been spoken of as governing the relations between the invaders and the invaded, and so entering as an element into the law administered by an occupant. It must be distinguished both in its purpose and in its rules from the martial law or "state of siege" to which governments often have recourse in times of internal disturbance; the internal measures which pass under that name can be discussed only in connection with the constitutional laws of the respective countries in which they are taken. It must also be distinguished from the military laws issued by governments for the discipline and conduct of their armies. So far as these deal with the conduct of the respective armies towards the populations of the countries invaded by them, they cover the same ground as the martial law of international jurists and ought to be in accordance with whatever has been agreed on as internationally binding, but, being the regulations of particular States, they have no international force. The martial law of international jurists consists of the regulations which by convention or approved custom are agreed on as internationally binding for the relations between invaders and invaded, and, as such, is not peculiar to the cases in which invasion has ripened into occupation. It comes into play from the first moment of an invasion, but during an occupation its rules are increased in stringency in proportion to the greater security which the invader claims to enjoy in the midst of a population which he benefits by maintaining social order among them. Its courts of justice are courts-martial, to be held with as great security for full enquiry and fair dealing as circumstances permit, but so that drumhead courts-martial are not necessarily excluded.

Westlake, vol. 2, pp. 98, 99.

Punishment of inhabitants.

That the inhabitant of an occupied district should incur death for giving information to the enemy, or for serving as a guide to the troops of his own country, is a relic of the time when occupation meant conquest, transferring the allegiance of the occupied population. There is no other foundation for the epithet of "war-treason" (*kriegsverrath*) which German writers apply to every act of a member of that population directed against the occupying army, for the duty owed in return for the maintenance of order will not extend so far. No act of that kind can be regarded as treasonable without violating the modern view of the nature of military occupation, and to introduce the notion of moral fault into an invader's view of what is detrimental to him serves only to inflame his passions, and to make it less likely that he will observe the true limit of necessity in his repression of what is detrimental to him. And in the cases of giving information and serving as guide to one's own people, the attempt at sanguinary repression would have the additional demerit of inutility, since it could not succeed except among a people more abject than it would be possible to discover. And when the inhabitants of an occupied district rise in insurrection, and satisfy the conditions of loyal fighting laid down by H I, it is difficult to refuse the privileges of combatants to a body of them operating on a scale which may fairly be considered as war. If they are to have those privileges when "they have displaced the occupation," they can not reasonably be refused them when taking the necessary means of displacing it; and that H I applies in occupied territory may be inferred from the restriction of H II to unoccupied territory.

Westlake, vol. 2, pp. 100, 101.

Officials of the territorial government.

Lastly, it may be worth while to enquire how the civil officials of the territorial or legitimate government are affected by the district in which they serve passing into the occupation of an enemy. It will generally be the better course for the population whose interest they ought to consult that they should continue to carry on the ordinary administration under the invader, but he has no right to force them to do so. If they decline to do it, his only right, and it is also his duty, is to replace them by appointees of his own, so far as necessary for maintaining order and the continuance of the daily life of the district: other purposes, as those of the superior judicial offices, can bide their time.

Westlake, vol. 2, pp. 122, 123.

Contra as to respecting laws.

Mr. Walker, Secretary of the Treasury, March 30, 1847, made a report to the President, accompanied with a scale of duties, as well as with a scheme of regulations. He had, he said, found it to be impossible to adopt as a basis the tariff of Mexico, because the duties were extravagantly high. There were also sixty articles the importation of which was forbidden by that tariff, among these articles being sugar, rice, cotton, boots, coffee, soap, and many other articles of daily use. He recommended that the Mexican Government monopoly in tobacco should be abolished, so as to diminish the resources

of that Government and augment those of the United States by collecting the duty on all imported tobacco. The Mexican interior transit duties were also to be abolished, as well as the internal Government duty on coin and bullion. The prohibition of exports and the duties on exports should be annulled.

March 31, 1847, President Polk communicated Mr. Walker's report to the Secretary of the Navy, with instructions to carry its recommendations into effect. April 3, 1847, Mr. Mason, Secretary of the Navy, enclosed to the President a copy of instructions which he had on that day, after consultation with the Secretary of War, addressed to the officers commanding the naval forces of the United States in the Pacific Ocean, and in the Gulf of Mexico, respectively. These instructions stated that on the occupation of California Commodore Stockton was, on November 5, 1846, instructed to admit the commerce of Americans and neutrals, except contraband, into places in actual military occupation, on the payment of moderate duties, within the limits prescribed by the tariff laws of the United States. After the occupation of Matamoras, and subsequently of Tampico, instructions were given by which the moderate trade at those places was confined to cargoes in American bottoms which had paid duties in a customhouse of the United States; but, as Mexico still refused to negotiate for peace, the President had determined to place the trade of all occupied places on a footing more favorable to neutral commerce and better calculated to secure a contribution to be used in carrying on the war and in relief of the United States Treasury. It was expressly pointed out that the orders in this regard derived no authority from the Treasury Department, which had no control over the subject, but from the President, who, as Commander in Chief, had determined to cause them to be carried into effect by the officers of the Army and Navy.

Moore's Digest, vol. 7, pp. 283, 284.

"Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent; and in practice they are not usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation. This enlightened practice is, so far as possible, to be adhered to on the present occasion. The judges and other officials connected with the administration of justice may, if they accept the supremacy of the United States, continue to administer the ordinary law of the land, as between man and man, under the supervision of the American commander-in-chief. The native constabulary will, so far as may be practicable, be preserved. The freedom of the people to pursue their accustomed occupations will be abridged only when it may be necessary to do so.

"While the rule of conduct of the American commander-in-chief will be such as has just been defined, it will be his duty to adopt measures of a different kind if, unfortunately, the course of the people should render such measures indispensable to the maintenance of law

and order. He will then possess the power to replace or expel the native officials in part or altogether; to substitute new courts of his own constitution for those that now exist, or to create such new or supplementary tribunals as may be necessary. In the exercise of these high powers the commander must be guided by his judgment and his experience and a high sense of justice."

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American Forces, Correspondence relating to War with Spain I. 159.

All civil and penal law shall continue to take its usual course in the enemy's places and territories under martial law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under martial law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

Lieber, art. 6.

Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.

Lieber, art. 47.

Functions of government.—All the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under military occupation, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

U. S. Manual, p. 108.

Nature of government.—It is immaterial whether the government established over an enemy's territory be called a military or civil government. Its character is the same and the source of its authority is the same. It is a government imposed by force, and the legality of its acts are determined by the laws of war. During military occupation it may exercise all the powers given by the laws of war.

U. S. Manual, p. 108.

The laws in force.—The principal object of the occupant is to provide for the security of the invading army and to contribute to its support and efficiency and the success of its operations. In restoring public order and safety he will continue in force the ordinary civil and criminal laws of the occupied territory which do not conflict with this object. These laws will be administered by the local officials as far as practicable. All crimes not of a military nature and which do not affect the safety of the invading army are left to the jurisdiction of local courts.

U. S. Manual, p. 109.

Power to suspend and promulgate laws.—The military occupant may suspend existing laws and promulgate new ones when the exigencies of the military service demand such action.

U. S. Manual, p. 109.

Nature of laws suspended.—The occupant will naturally alter or suspend all laws of a political nature as well as political privileges and all laws which affect the welfare and safety of his command. Of this class are those relating to recruitment in occupied territory, the right of assembly, the right to bear arms, the right of suffrage, the freedom of the press, the right to quit or travel freely in occupied territory. Such suspensions should be made known to the inhabitants.

U. S. Manual, p. 109.

It is no longer considered permissible for him to work his will unhindered, altering the existing form of government, upsetting the constitution and the domestic laws, and ignoring the rights of the inhabitants.

The occupant, therefore, must not treat the country as part of his own territory, nor consider the inhabitants as his lawful subjects. He may, however, demand and enforce such measure of obedience as is necessary for the security of his forces, the maintenance of order, and the proper administration of the country.

Edmonds and Oppenheim, arts. 354, 355.

The authority of the power of the State having passed *de facto* into the hands of the occupant, the latter has the duty to do all in his power to restore and ensure, so far as possible, public order and safety.

Edmonds and Oppenheim, art. 358.

Neither the ordinary civil nor criminal jurisdiction in force in the home territory of the occupant is considered to extend over occupied territory.

Edmonds and Oppenheim, art. 363.

Therefore the civil and penal laws of the occupied country continue as a rule to be valid, the courts which administer them are permitted to sit, and all crimes of the inhabitants not of a military nature or not affecting the safety of the army are left to their jurisdiction.

Edmonds and Oppenheim, art. 364.

If demanded by the exigencies of war, it is within the power of the occupant to alter or suspend any of the existing laws, or to promulgate new ones, but important changes can seldom be necessary and should be avoided as far as possible.

Edmonds and Oppenheim, art. 366.

The occupier shall facilitate the resumption of commercial transactions and the operation of the main public services.

The military authority shall allow to prevail the law in force in the occupied country.

Unless absolutely prevented, the occupier shall allow the local legislation to continue in force as far as compatible with his safety.

We shall respect in their entirety the constitutional laws, the civil and penal laws, and the laws on commerce. He may suspend the enforcement of certain political, administrative, and financial laws. The occupier has, for instance, a right to suspend the application of the military and recruiting or conscription laws, and the laws on the freedom of the press and on the right of assembly.

Jacomet, p. 70.

In civil matters, the provisional tribunals of the occupier shall apply the law of the occupied, but, after the occupation has terminated, if the judgments rendered by these tribunals have not been carried out, they shall be considered as foreign judgments and not be enforceable until they have received an order of execution.

In ordinary penal matters, the provisional tribunals established by the occupier shall, as far as possible, render their judgments in accordance with the ordinary penal law of the occupied. These judgments shall be enforceable only during the period of the occupation.

Jacomet, p. 73.

Since the conqueror is only the substitute for the real Government, he will have to establish the continuation of the administration of the country with the help of the existing laws and regulations. The issue of new laws, the abolition or alteration of old ones, and the like, are to be avoided if they are not excused by imperative requirements of war; only the latter permit legislation which exceeds the need of a provisional administration.

German War Book, p. 181.

The civil and criminal jurisdiction continues in force as before.

German War Book, p. 182.

Article 43, Annex to Hague Convention IV, 1907, is substantially identical with section 193, Austro-Hungarian Manual, 1913.

Regulation of trade.

With reference to restrictions placed by the American military authorities on commerce with the Sulu Islands, the Government of the United States took the ground that, as the islands were then subject to military occupation, it was the right of the commander of the occupying forces to regulate or prohibit trade with the territory so occupied. The fact was also pointed out that the military forces of the United States were engaged in suppressing an insurrection in a part of the Philippine Archipelago accessible from the Sulu Islands, and that the military authorities conducting the operations against the insurrection were at one time of opinion that a military necessity existed for prohibiting commercial intercourse between the Sulu Islands and the outside world. To that end Admiral Dewey, in June, 1899, issued an order prohibiting all trade with the Philippines, except with the ports of Manila, Illoilo, Cebu, and Bakalota. Subsequently this order was modified and new orders were substituted, under which such restrictions on trade

with the Sulu Islands were enforced as were deemed essential to meet the military necessity occasioned by the insurrection. These restrictions were emergency measures, and were not intended as an evidence of what the permanent policy of the United States would be when peace was restored in the Philippines.

Moore's Digest, vol. 7, pp. 272, 273, citing Mr. Adee, Act. Sec. of State, to Count Quadt, German chargé, Oct. 19, 1900.

Case of Guerin, Dalloz, II, p. 185.

This was a case which arose during the military occupation by Germany of a portion of France, in 1870–71, and involved a Frenchman who purchased, from the Germans, trees felled by them in the state forests and who was prosecuted after the war for a breach of the forestry laws of France.

The Court held that the military occupation did not suspend the civil and criminal laws of France, which continued to be obligatory on all Frenchmen, so long at least as such laws had not been expressly and specifically abrogated by the exigencies of the war.

Snow's Cases on International Law, pp. 375–377.

United States v. Rice, 4 Wheaton, 246.

In this case it was held that while Castine, in Maine, was in the military possession of the British forces, during the war of 1812, it was not a part of the United States within the meaning of the revenue laws, so that, after the evacuation by the British, the United States could collect duties on goods imported into it during the military occupation.

The Court said:

"By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender, the inhabitants passed under a temporary allegiance to the British government, and were bound by such laws, and such only, as it chose to recognize and impose. From the nature of the case, no other laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim to obedience. Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port; and goods imported into it by the inhabitants were subject to such duties only as the British government chose to require. Such goods were in no correct sense imported into the United States."

Fleming v. Page, 9 Howard, 603.

In this case, it was held that goods imported into the United States from Tampico, Mexico, while that place was in the military occupation of the United States forces, were to be considered as importations from a foreign country. However, the court said:

"It is true, that, when Tampico had been captured, and the State of Tamaulipas subjugated, other nations were bound to regard the

country, while our possession continued, as the territory of the United States, and to respect it as such. For, by the laws and usages of nations, conquest is a valid title, while the victor maintains the exclusive possession of the conquered country. The citizens of no other nation, therefore, had a right to enter it without the permission of the American authorities, nor to hold intercourse with its inhabitants, nor to trade with them. As regards all other nations, it was a part of the United States, and belonged to them as exclusively as the territory in our established boundaries."

Jecker v. Montgomery, 13 Howard, 498.

In the course of a decision holding that the executive authority of the United States could not establish courts of prize in territory under military occupation, the Court said:

"The courts, established or sanctioned in Mexico during the war by the commanders of the American forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property, while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought proper to interfere."

Cross v. Harrison, 16 Howard, 164.

The Court, in considering the character of the government set up in California under the military occupation of the United States Army, said:

"The formation of the civil government in California, when it was done, was the lawful exercise of a belligerent right over a conquerred territory."

The territory of Castine, by the conquest and occupation by Great Britain, passed under the temporary allegiance and sovereignty of the British sovereign. The sovereignty of the United States over the territory was suspended during such occupation, so that the laws of the United States could not be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. But a territory conquered by an enemy is not to be considered as incorporated into the dominions of that enemy without a renunciation in a treaty of peace, or a long and permanent possession. Until such incorporation it is still entitled to the full benefit of the law of postliminy.

Moore's Digest, vol. 7, p. 258, citing United States v. Rice, 4 Wheat., 246; United States v. Hayward, 2 Gallison, 485.

On the occupation of New Mexico in 1846, General Kearny, commanding the American forces, established a provisional government.

"By this substitution," says Mr. Justice Daniel, delivering the opinion of the court, "of a new supremacy, although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the Government of their former allegiance, or those arising from contract or usage, remained in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and laws of the United States, or with any regulations which the conquering and

occupying authority should ordain. Amongst the consequences which would be necessarily incident to the change of sovereignty, would be the appointment or control of the agents by whom and the modes in which the government of the occupant should be administered—this result being indispensable, in order to secure those objects for which such a government is usually established."

In this relation, the opinion cites The Fama, 5 Robinson's Rep. 106; Vattel, bk. 3, chap. 13, sec. 200; United States *v.* Percheman, 7 Pet. 86; Mitchel *v.* United States, 9 Pet. 711; 1 Kent's Comm. 177.

General Kearny, among other things, established courts and a code of laws. The present action was brought in one of those courts and under a provision of the code. Congress, by an act approved Sept. 9, 1850 (9 Stat. 446), established a Territorial government for New Mexico. The legislative assembly of the Territory, by an act of July 14, 1851, provided for the transfer of suits and processes of the Kearny courts to the new courts, and this was done in the present case.

No question was made by counsel as to the validity of the Kearny ordinances, said the court, "with respect to the period during which the territory was held by the United States as occupying conqueror, and it would seem to admit of no doubt that during the period of their valid existence and operation, these ordinances must have displaced and superseded every previous institution of the vanquished or deposed political power which was incompatible with them." But it was contended that all rights of the occupying conqueror, as such, were terminated by the close of the war, and that the prior institutions, which were overthrown or suspended, were revived and reestablished. "The fallacy of this pretension," said the court, "is exposed by the fact, that the territory never was relinquished by the conqueror, nor restored to its original condition or allegiance, but was retained by the occupant until possession was matured into absolute permanent dominion and sovereignty; and this, too, under the settled purpose of the United States never to relinquish the possession acquired by arms. We conclude, therefore, that the ordinances and institutions of the provisional government would be revoked or modified by the United States alone, either by direct legislation on the part of Congress, or by that of the Territorial government in the exercise of powers delegated by Congress."

In reality, however, the opinion of the court on these points was *obiter*, since the case went off on a mere question of pleading, the opinion declaring that the record presented a matter "not within the appellate or revisory power" of the court.

Moore's Digest, vol. 7, pp. 258, 259; Leitensdorfer v. Webb (1857), 20 How., 176. See, also, Cross v. Harrison, 16 How., 164, 190.

While New Orleans was occupied by the United States forces during the civil war, a lease of water-front property was made to a steamship company by the city authorities appointed by the commanding general. The lease was for ten years on payment of an annual rental, and the company entered into possession and proceeded to improve the property. Some months later the commanding general forbade the military city authorities to grant rights extending beyond the reestablishment of civil government, and soon afterwards the city government was transferred to the proper civil

authorities, who undertook to remove by force a part of the company's property, maintaining that the military government had no power to lease property held in trust by the city for public uses, and that whatever rights or powers the military authorities possessed ended with the termination of hostilities. The company applied for an injunction and damages. It was held that the powers of a military occupant in the exercise of the functions of government were limited only by the laws and usages of war; that a contract for the use of a part of the water front of the city was within the scope of the military occupant's authority; that the question therefore arose whether the contract under discussion represented a fair and reasonable exercise of such authority; that, considering the provisions of the lease, this question was to be answered in the affirmative; that the lease therefore did not fall when the military jurisdiction ended, and that the law of post liminium had no application to the case. The court added, however: "We do not intend to impugn the general principle that the contracts of the conqueror touching things in conquered territory lose their efficacy when his dominion ceases. We decide the case upon its own peculiar circumstances, which we think are sufficient to take it out of the rule."

Moore's Digest, vol. 7, pp. 259, 260; New Orleans *v.* Steamship Co., 20 Wall. 387. Cited by Knox, At. Gen., Oct. 17, 1901, 23 Op. 551, 561, holding that sec. 3 of the joint resolution of May 1, 1900, 31 Stat. 715, imposing certain restrictions on the grant of franchises in Porto Rico, did not affect an antecedent license issued by the Secretary of War for the building and maintenance of a wharf at San Juan.

The Constitution did not prohibit the creation by military authority of courts for the trial of civil causes during the civil war in conquered portions of the insurgent States. The establishment of such courts was the exercise of the ordinary rights of conquest.

Moore's Digest, vol. 7, pp. 260, 261, citing Mechanics and Traders' Bank *v.* Union Bank, 22 Wall. 276.

Petitioner, a resident native of Porto Rico, and a civilian, was tried, convicted and sentenced in March, 1899, for a crime committed in that island, by a military tribunal of the United States established during the occupancy of the island by the forces of the United States as conquered territory of Spain. *Held*, that so long as a state of war existed between Spain and the United States, and the island remained Spanish territory, which was until April 11, 1899, when ratifications of the treaty of peace and of cession were exchanged, such tribunal had jurisdiction to try offenses, and, no objection being made to the formal regularity of the proceedings, the petitioner was not entitled to discharge on a writ of habeas corpus.

Moore's Digest, vol. 7, p. 261, citing Ex parte Ortiz, 100 Fed. Rep. 955.

Where the President, at the close of hostilities, appointed a military governor of one of the States, the people whereof had been in rebellion against the United States, held, that such appointment did not change general laws of the State then in force for the settlement of the estates of deceased persons, nor remove from office those who were at the time engaged by law with public duties in that behalf.

Moore's Digest, vol. 7, p. 266, citing Ketchum *v.* Buckley, 99 U. S. 188.

An officer in the United States Army, assigned to the command of a military district, had no authority, as military commander, to issue an order to the sheriff of the county, requiring him to place a person in possession of a plantation and personal property which were, at the time, in the possession of another person. But where he issued such an order on the application of H., who claimed to be the true owner of the property, and was sued by W., who was dispossessed by the execution of the order, for damages for such dispossession, it was held that he could justify under such order if H. was the true owner and was entitled to the possession.

Moore's Digest, vol. 7, p. 267, citing Whalen *v.* Sheridan, 17 Blatchf. 9.

The appointment of an adminstrator, though made [in a state in rebellion] during the war between the States, is valid.

Moore's Digest, vol. 7, p. 267, citing Allen *v.* Kellam, 69 Ala. 442.

In 1790 a fund bequeathed in trust for the poor of a county in Virginia was loaned on real estate security. In 1863 the legislature authorized the payment of amount and it was paid in Confederate currency. Held, that the legislation was constitutional, and that the lien was discharged and could not be reinstated.

Moore's Digest, vol. 7, p. 268, citing Prince William School Board *v.* Stuart and Palmer, 80 Va. 64.

The fact that the act of Dec. 15, 1863, to encourage the erection of certain machinery by donation of land and otherwise, was enacted during the rebellion does nor render it void, as having been enacted in aid of the rebellion, its language not warranting such construction. 25 S. W. 705, affirmed.

Moore's Digest, vol. 7, p. 268, citing McLeary *v.* Dawson, 87 Tex. 524, 29 S. W. 1044.

Where, during the civil war, the clerk of a county court went with the Confederates when they abandoned the county, taking the records with him, and the Federal forces took possession of the county, held, that no one could administer the duties of the office in the Federal lines as deputy for the clerk while the latter was within the Confederate lines.

Moore's Digest, vol. 7, p. 269, citing Herring *v.* Lee, 22 W. Va. 661.

Raywood v. Thomas, 91 U. S. 712.

In this case a special order, by the officer in command of forces in control of the State of South Carolina annulling a decree made by a court of chancery in that State was held to be void.

The Court said: "Whether Congress could have conferred the power to do such an act is not the question we are called upon to consider. It is an unbending rule of law that the exercise of military power, where the rights of the citizens are concerned, shall never be pushed beyond what the exigency requires."

Dooley v. United States, 182 U. S. 222, 231.

The Court said:

"In New Orleans *v.* Steamship Co., 20 Wall. 387, 393, it was said, with respect to the powers of the military government over the city

of New Orleans after its conquest, that it had 'the same power and rights in territory held by conquest as if the territory had belonged to a foreign country and had been subjugated in a foreign war. In such cases the conquering power has the right to displace the preexisting authority, and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid, and apply them to its own use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases, save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject."

OCCUPANT FORBIDDEN TO COMPEL INHABITANTS TO FURNISH MILITARY INFORMATION.

A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence.— *Article 44, Regulations, Hague Convention IV, 1907.*

[See infra, page 181, for report to the Hague Conference of 1907 as to last paragraph of Article 23 and as to Article 44 of Hague Convention; IV, 1907.]

Any compulsion of the population of occupied territory to take part in military operations against its own country is prohibited.

Art. 44, Regulations, Hague Convention II, 1899.

The four following articles, Articles 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honor and lives of individuals and their private property, whether individual or collective, as well as respect for religious convictions.

It appeared to the subcommission that these articles were well placed in this chapter before the provisions the purpose of which is to set legal limitations upon the actual power that the victor wields in the hostile country.

Besides, as Colonel Gross von Schwarzhoff remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defence.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 149.

The population of occupied territory cannot be forced to take part in military operations against their own country.

Art. 36, Declaration of Brussels.

[For the discussion in Higgins as to Articles 23 (last paragraph) and 44, Hague Convention, IV, 1907, see citation under the heading of the first named article (last paragraph)].

Employment of guides.

The words are, "Any compulsion on the population of occupied territory to furnish information about the army of the other belligerent, or about his means of defence, is forbidden," and the most natural meaning to put on them is that they specify a particular instance of what is already prohibited in general terms by Article 23. Because of the dangers deemed to lurk in this particularity Germany

entered a reservation against the article, and not because she shared the desire of Austria-Hungary and Russia to be free to employ impressed guides. Yet in the admirable report of the French delegation this article is praised on the ground that it solemnly prohibits so odious a practice. The emphatic rejection of an Austro-Hungarian amendment which would have allowed it, and indeed the whole course of the discussion, show that the practice was prohibited; but we shall find the prohibition in the general statements of Article 23 and Article 52 rather than in the particular assertions of Article 44.

Lawrence, p. 418.

Guidance.

The article [44, Hague Regulations, 1907] * * * ominously avoiding express mention of the service of guidance, while on the other hand that service is brought more clearly than before under the expression of the principle in its new place by substituting the term "operations of war" for that of "military operations." Indeed the statement of this portion of the laws of war has been marked by peculiar inconsistency and vacillation. It was the universal practice to exact the services of guides. Uneasiness was displayed about it at Brussels in 1874 and the Hague in 1899. Then the German General Staff, while echoing the sentiment of its inhumanity, treated it in its work of 1902 as indispensable, and the Japanese followed the practice in their war against China. Now Germany, Austria, Japan, Montenegro and Russia have withheld their ratification from the new H XLIV, as though, after all the pains taken with it, the code still condemned the practice, as I venture to think that it does.

If the inhabitants act voluntarily as guides to the enemy, they of course render themselves liable to the penalties of treason from their own government when restored in the locality; and the invader ought therefore to furnish requisitions in writing to the guides whom he decides to employ.

Westlake, vol. 2, pp. 101, 102; Carpentier, p. 110.

It is no longer considered lawful—on the contrary, it is held to be a serious breach of the law of war—to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

Lieber, art. 33.

Impressment of guides.

Interpretation of rule.—This article was reserved by Austria-Hungary, Bulgaria, Montenegro, Russia, Japan, and Roumania, because it was believed that the prohibition was contrary to the general rule and practice of nations as expressed in G. O. 100, 1863, art. 93, that "All armies in the field stand in need of guides, and impress them if they can not obtain them otherwise." That the impressment of guides was intended to be forbidden by this rule seems evident from the action of the above nations who reserved it, and as well from the discussions at The Hague.

U. S. Manual, p. 115.

Compelling the inhabitants to serve as guides for the invader is therefore forbidden.

Jacomet, p. 76.

Contra.

But a still more severe measure is the compulsion of the inhabitants to furnish information about their own army, its strategy, its resources, and its military secrets. The majority of writers of all nations are unanimous in their condemnation of this measure. Nevertheless it cannot be entirely dispensed with; doubtless it will be applied with regret, but the argument of war will frequently make it necessary.

German War Book, p. 153.

OCCUPANT FORBIDDEN TO COMPEL INHABITANTS TO TAKE OATH OF ALLEGIANCE.

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.—*Article 45, Regulations, Hague Convention IV, 1907.*

Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited.

Article 45, Regulations, Hague Convention II, 1899.

The four following articles, Articles 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honor and lives of individuals and their private property, whether individual or collective, as well as respect for religious convictions.

It appeared to the subcommission that these articles were well placed in this chapter before the provisions the purpose of which is to set legal limitations upon the actual power that the victor wields in the hostile country.

Besides, as Colonel Gross von Schwarzhoff remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defence.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 149.

The population of occupied territory cannot be compelled to swear allegiance to the hostile power.

Art. 37, Declaration of Brussels.

The population of the invaded district cannot be compelled to swear allegiance to the hostile power; but inhabitants who commit acts of hostility against the occupant are punishable.

Institute, 1880, p. 35.

Temporary or qualified allegiance.

It may be stated, as a general proposition, that the duty of allegiance is reciprocal to the duty of protection. When, therefore, a state is unable to protect a portion of its territory from the superior force of an enemy, it loses, for the time, its claim to the allegiance of those whom it fails to protect, and the inhabitants of the conquered territory pass under a temporary or qualified allegiance to the conqueror. The sovereignty of the state which is thus unable to protect its territory is displaced, and that of the conqueror is substituted in its stead. But this change of sovereignty may be only of a temporary character, for the conquered territory may be recaptured by the former owner, or it may be restored to him by a

treaty of peace. During mere military occupation the sovereignty of the conqueror is unstable and incomplete. Hence the allegiance of the inhabitants of the territory so occupied is a temporary and qualified allegiance, which becomes complete only on the confirmation of the conquest, and with the express or implied consent of the conquered.

Halleck, p. 791.

He may require persons so serving him to take an oath engaging themselves during the continuance of the occupation to obey his orders, and not to do anything to his prejudice; but he can not demand that they shall exercise their functions in his name. The former requirement is merely a precaution which it is reasonable for him to take in the interests of his own safety; the latter would imply a claim to the possession of rights of sovereignty, and would therefore not be justified by the position which he legally holds within the occupied territory.

Hall, p. 495.

Oath of neutrality.

A mere occupant has no right to exact an oath of allegiance from the population. He may, however, make such privileges as he may grant to them conditional upon their oath or promise not to take up arms against him, or to otherwise assist the enemy. This is sometimes described as an "oath of neutrality."

Holland, p. 53.

Oath of neutrality.

On the other hand, he may compel them to take an oath—sometimes called an "oath of neutrality"—to abstain from taking up a hostile attitude against the occupant and willingly to submit to his legitimate commands; and he may punish them severely for breaking this oath.

Oppenheim, vol. 2, p. 212.

Here [in Article 45, Hague Regulations, 1907] we have the express condemnation of another of the practices which resulted form the old theory of occupation. The principle extends to prohibit everything which would assert or imply a change made by the invader in the legitimate sovereignty. His duty is neither to innovate in the political life of the occupied districts nor needlessly to break the continuity of their legal life. Hence, so far as the courts of justice are allowed to continue administering the territorial law, they must be allowed to give their sentences in the name of the legitimate sovereign. With the modifications of the territorial law which the invader may introduce, they have nothing to do: those belong to his martial law, and he must enforce them.

Westlake, vol. 2, p. 102.

It is forbidden to force the population of occupied territory * * * to take the oath of allegiance to a hostile power.

Art. 16, Russian Instructions, 1904.

Oath of officials.—The occupant may require such officials as are continued in their offices to take an oath to perform their duties conscientiously and not to act to his prejudice. Every such official who declines to take such oath may be expelled; but, whether they do so or not, they owe strict obedience to the occupant.

U. S. Manual, p. 116.

The victor is distinctly "forbidden to force the inhabitants of occupied territory to swear allegiance to him," for they remain the subjects of their Sovereign and continue to have patriotic duties to their country.

Edmonds and Oppenheim, art. 356.

Article 45, Annex to Hague Convention IV, 1907, is substantially identical with section 194, Austro-Hungarian Manual, 1913.

Pledge to neutrality of conduct.

Though "a subject can not divest himself of the obligation of a citizen, and wantonly make a compact with the enemy of his country, stipulating a neutrality of conduct," yet, where his country is no longer able to give him protection, he may be warranted in making the best terms he can; e. g., he may be warranted in pledging himself to neutrality of conduct for the purpose of protecting his property in a place surrendered by his government to the enemy.

Moore's Digest, vol. 7, p. 273, citing *The Resolution*, Federal Court of Appeals, 2 Dall. 1, 10.

OBLIGATIONS OF OCCUPANT TOWARDS INHABITANTS AND THEIR PROPERTY.

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.[1]—*Article 46, Regulations, Hague Convention IV, 1907.*

The four following articles, Articles 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honor and lives of individuals and their private property, whether individual or collective, as well as respect for religious convictions.

It appeared to the subcommission that these articles were well placed in this chapter before the provisions the purpose of which is to set legal limitations upon the actual power that the victor wields in the hostile country.

Besides; as Colonel Gross von Schwarzhoff remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defence.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conference," p. 149.

And all women and children, scholars of every faculty, cultivators of the earth, artisans, maufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

Treaty of Amity and Commerce between the United States and Prussia, concluded July 11, 1799, Article XXIII.

If (which is not to be expected, and which God forbid) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible: * * *

[1] This article is substantially identical with Article 46, Regulations, Hague Convention II, 1899, and with Article 38, Declaration of Brussels.

Upon the entrance of the armies of either nation into the territories of the other, women and children, ecclesiastics, scholars of every faculty, cultivators of the earth, merchants, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all persons whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, unmolested in their persons. Nor shall their houses or goods be burnt or otherwise destroyed, nor their cattle taken, nor their fields wasted, by the armed force into whose power, by the events of war, they may happen to fall; but if the necessity arise to take anything from them for the use of such armed force, the same shall be paid for at an equitable price.

Treaty of Peace, Friendship, Limits ,and Settlement between the United States and Mexico, concluded February 2, 1848, Article XXII.

It is forbidden to maltreat inoffensive populations.

Institute, 1880, p. 29.

Family honor and rights, the lives of individuals, as well as their religious convictions and practice must be respected.

Institute, 1880, p. 36.

Private property, whether belonging to individuals or corporations, must be respected, and can be confiscated only under the limitations contained in the following articles.

Institute, 1880, p. 37.

* * * as wars are now carried on by regular troops, or, at least, by forces regularly organized, the peasants, merchants, maufacturers, agriculturists, and, generally, all public and private persons, who are engaged in the ordinary pursuits of life, and take no part in military operations, have nothing to fear from the sword of the enemy. So long as they refrain from all hostilities, pay the military contributions which may be imposed on them, and quietly submit to the authority of the belligerent who may happen to be in the military possession of their country, they are allowed to continue in the enjoyment of their property, and in the pursuit of their ordinary avocations. This system has greatly mitigated the evils of war, and if the general, in military occupation of hostile territory, keeps his soldiery in proper discipline, and protects the country-people in their labors, allowing them to come freely to his camp to sell their provisions, he usually has no difficulty in procuring subsistence for his army, and avoids many of the dangers incident to a position in a hostile territory.

Halleck, p. 427.

Private property on land, is now, as a general rule of war, exempt from seizure or confiscation; and this general exemption extends even to cases of absolute and unqualified conquest. Even where the conquest of a country is confirmed by the unconditional relinquishment of sovereignty by the former owner, there can be no general or partial transmutation of private property, in virtue of any rights of conquest. That which belonged to the government of the vanquished, passes to the victorious state, which also takes the place of the former sovereign, in respect to the right of eminent domain; but private

rights, and private property, both movable and immovable, are, in general, unaffected by the operations of a war, whether such operations be limited to mere military occupation, or extend to complete conquest.

Halleck, p. 456.

The application of the same principle has also limited and restrained the operations of war against the territory and other property of the enemy. From the moment one State is at war with another, it has, on general principles, a right to seize on all the enemy's property, of whatsoever kind and wheresoever found, and to appropriate the property thus taken to its own use, or to that of the captors. By the ancient law of nations, even what were called *res sacrae* were not exempt from capture and confiscation. Cicero has conveyed this idea in his expressive metaphorical language, in the Fourth Oration against Verres, where he says that "Victory made all the *sacred* things of the Syracusans *profane*." But by the modern usage of nations, which has now acquired the force of law, temples of religion, public edifices devoted to civil purposes only, monuments of art, and repositories of science, are exempted from the general operations of war. Private property on land is also exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and of military contributions levied upon the inhabitants of the hostile territory. This exemption extends even to the case of an absolute and unqualified conquest of the enemy's country. In ancient times, both the movable and immovable property of the vanquished passed to the conqueror. Such was the Roman law of war, often asserted with unrelenting severity; and such was the fate of the Roman provinces subdued by the northern barbarians, on the decline and fall of the western empire. A large portion, from one third to two thirds, of the lands belonging to the vanquished provincials, was confiscated and partitioned among their conquerors. The last example in Europe of such a conquest was that of England, by William of Normandy. Since that period, among the civilized nations of Christendom, conquest, even when confirmed by a treaty of peace, has been followed by no general or partial transmutation of landed property. The property belonging to the government of the vanquished nation passes to the victorious State, which also takes the place of the former sovereign, in respect to the eminent domain. In other respects, private rights are unaffected by conquest.

Dana's Wheaton, pp. 431, 432.

Measures against non-combatants.

If non-combatants—*i. e.*, persons not in military service—make forcible resistance, or violate the mild rules of modern warfare, give military information to their friends, or obstruct the forces in possession, they are liable to be treated as combatants; and, although none of these acts be done, non-combatants, in a particular place, under special circumstances, may be disarmed, required to give security for their peaceful conduct, or be held as prisoners, as where there is reason to doubt their inaction, and the situation of the forces in possession is precarious.

Dana's Wheaton, p. 431, note 168.

In modern warfare, private property in movables is not considered as transferred to the conqueror by the mere fact of belligerent occupation of the country. There must be an act of capture or transfer.

Dana's Wheaton, p. 439, note 169.

Exception as to combatants.

Private persons remaining quiet, and taking no part in the conflict, are to be unmolested, but if the people of an invaded district take an active part in the war, they forfeit their claim to protection. This marked line of separation between the soldier and the non-soldier, is of extreme importance for the interests of humanity.

The property, movable as well as immovable, of private persons in an invaded country, is to to remain uninjured.

Woolsey, p. 219.

Of the private property found by a belligerent within the territory of his enemy, property in land and houses, including property in them held by others than their absolute owners, was very early regarded as exempt from appropriation. The exemption was no doubt determined by reasons much the same as those which have been suggested as accounting for the prohibition to alienate state domains. Land being immovable, its fate was necessarily attendant on the ultimate issue of hostilities; an invader could not be reasonably sure of continued possession for himself, nor could he give a firm title to a purchaser; and these impossibilities re-acted upon his mind so as to prevent him from feeling justified in asserting the land to be his.

Personal property on the other hand, until a late period, consisted mainly in the produce of the soil, merchandise, coin, and movables of value. It was therefore of such kind that much of it being intended to be destroyed in the natural course of use, an invader could render his ownership effective by consuming the captured objects, and that all of it was capable of being removed to a place of safety whither it might reasonably be supposed that its owner would be unable to follow it. Hence personal property remained exposed to appropriation by an enemy; and so late as the seventeenth century, armies lived wholly upon the countries which they invaded, and swept away what they could not eat by the exercise of indiscriminate pillage. But gradually the harshness of usage was softened, partly from an increase of humane feeling, partly for the selfish advantage of belligerents, who saw that the efficiency of their soldiers was diminished by the looseness of discipline inseparable from marauding habits, and who found, when war became systematic, that their own operations were embarrassed in countries of which the resources were destroyed. A custom grew of allowing the inhabitants of a district to buy immunity from plunder by the payment of a sum of money agreed upon between them and the invader, and by furnishing him with specified quantities of articles required for the use of his army; and this custom has since hardened into a definite usage, so that the seizure of movables or other personal property in its bare form has, except in a very few cases, become illegal.

Hall, pp. 441, 442.

He [the invader] is therefore forbidden as a general rule to vary or suspend laws affecting property and private personal relations, or which regulate the moral order of the community. Commonly also he has not the right to interfere with the public exercise of religion, or to restrict expression of opinion upon matters not directly touching his rule, or tending to embarrass him in his negotiations for peace.

Hall, p. 489.

As moreover his [the invader's] rights belong to him only that he may bring his war to a successful issue, it is his duty not to do acts which injure individuals, without facilitating his operations, or putting a stress upon his antagonist. Thus though he may make use of or destroy both public and private property for any object connected with the war, he must not commit wanton damage.

Hall, pp. 499, 500.

Controverted exception.

Much controversy has been carried on as to the legitimacy of placing civilian inhabitants of occupied territory upon railway trains carrying troops of the invader, in order to prevent such trains from being fired upon. This was done by the Germans in France, in the war of 1870, and again by the British in the Boer War.

Holland, p. 54.

Concentration camps.

Concentration camps are practically internment camps for non-combatants. They have been violently attacked on the ground that the laws of war do not permit of the inoffensive inhabitants of a hostile country, old men, women, and children, being made prisoners. Generally speaking, the objection taken to such camps is sound in principle. Article XLVI of the *Règlement* inculcates respect for "family honour and rights, the lives of individuals, and private property," and it is an interference with this war right of non-combatants to remove them from their homes and intern them in a military camp. Such an extreme measure is only to be justified by very extreme circumstances; in fact, by such circumstances as make concentration not only imperatively necessary for the success of the responsible belligerent's operations, but also the less of two evils for the inhabitants themselves. I have shown that there are circumstances in which the devastation of a country is justifiable. Such circumstances existed in the Transvaal and Free State in 1900–2, no less than in some of the southern States of North America in 1864–5. The United States authorities did not adopt the system of concentration in 1864–5; were the inhabitants of the Carolinas and Georgia in better case than the inhabitants of the Boer Republics where concentration was adopted?

Spaight, p. 307.

Concentration camps.

If devastation is justified, then some system of concentration is not only justified, but demanded by considerations of humanity. At the last Hague Conference, some of the delegates put forward the view that concentration was implicitly forbidden, because not men-

tioned, by the *Règlement*. This view did not command itself to the Conference generally, but a Japanese proposal that internment should be resorted to "only in case of military necessity" was recorded in the *procés verbal*.

Spaight, p. 310.

Limitations—Military necessities.

The fact is that this Article XLVI must be read subject to military necessities. One might add such a proviso to nearly every Article, as Baron Jomini pointed out at the Conference of 1874, but after none is the proviso so necessary as after this. So read, the Article forbids certain violent acts unless they are demanded by the necessity of overcoming the armed forces of the enemy. Such acts must not be done as a substantive measure of war—they must not be made an end in themselves, but only a means to the legitimate end of war, that is, the destruction of the other belligerent's fighting force. To destroy property or imprison peaceable inhabitants in order to bring pressure to bear on them and to induce them to use their influence to force their legal government to submit, is absolutely contrary to Article XLVI. Instances are not wanting in which belligerents have tried to apply such illegal pressure, but every such attempt has been condemned by the more enlightened minds of the time. There is no doubt that, with all its limitations, the Article constitutes a very valuable check upon the power of the sword. But one must bear the fact in mind that there are limitations to its range and authority and very important limitations too.

The word "religion" in the *Règlement* covers all beliefs. The freedom of worship secured by this article is obviously liable to restriction if it be used for the purpose of seditious propaganda or the encouragement of opposition to the occupant's government. No commander can permit the preaching of a Jeddah against him or the celebration of such emotional, *quasi*-patriotic worship as drives the people to "go fantee."

Spaight, p. 375.

Exceptions and restrictions.

Whereas in former times private enemy persons of either sex could be killed or otherwise badly treated according to discretion, and whereas in especial the inhabitants of fortified places taken by assault used to be abandoned to the mercy of the assailants, in the eighteenth century it became a universally recognized customary rule of the Law of Nations that private enemy individuals should not be killed or attacked. In so far as they do not take part in the fighting, they may not be directly attacked and killed or wounded. They are, however, like non-combatant members of the armed forces, exposed to all injuries indirectly resulting from the operations of warfare. Thus, for instance, when a town is bombarded and thousands of inhabitants are thereby killed, or when a train carrying private individuals as well as soldiers is wrecked by a mine, no violation of the rule prohibiting attack on private enemy persons has taken place.

As regards captivity, the rule is that private enemy persons may not be made prisoners of war. But this rule has exceptions conditioned by the carrying out of certain military operations, the

safety of the armed forces, and the order and tranquillity of occupied enemy territory. Thus, for instance, influential enemy citizens who try to incite their fellow-citizens to take up arms may be arrested and deported into captivity. And even the whole population of a province may be imprisoned in case a levy *en masse* is threatening.

Apart from captivity, restrictions of all sorts may be imposed upon, and means of force may be applied against, private enemy persons for many purposes. Such purposes are:—the keeping of order and tranquillity on occupied enemy territory; the prevention of any hostile conduct, especially conspiracies; the prevention of intercourse with and assistance to the enemy forces; the securing of the fulfilment of commands and requests of the military authorities, such as those for the provision of drivers, hostages, farriers: the securing of compliance with requisitions and contributions, of the execution of public works necessary for military operations, such as the building of fortifications, roads, bridges, soldiers' quarters, and the like. What kind of violent means may be applied for these purposes is in the discretion of the respective military authorities, who on their part will act according to expediency and the rules of martial law established by the belligerents. But there is no doubt that, if necessary, capital punishment and imprisonment are lawful means for these purposes. The essence of the position of private individuals in modern warfare with regard to violence against them finds expression in article 46 of the Hague Regulations, which lays down the rule that "family honours and rights, individual lives and private property, as well as religious convictions and liberty, must be respected."

Oppenheim, vol. 2, pp. 151–153.

Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings, the buyer would acquire no right whatever to the property. Article 46 of the Hague Regulations expressly enacts that "private property may not be confiscated." But confiscation differs from the temporary use of private land and buildings for all kinds of purposes demanded by the necessities of war.

Oppenheim, p. 179.

Exceptions—Necessities of war.

Private personal property which does not consist of war material or means of transport serviceable to military operations may not as a rule be seized. Articles 46 and 47 of the Hague Regulations expressly stipulate that "private property may not be confiscated," and "pillage is formally prohibited." But it must be emphasised that these rules have in a sense exceptions, demanded and justified by the necessities of war. Men and horses must be fed, men must protect themselves against the weather. If there is no time for ordinary requisitions to provide food, forage, clothing, and fuel, or if the inhabitants of a locality have fled so that ordinary requisitions can not be made, a belligerent must take these articles wherever he can get them, and he is justified in so doing. And it must further be emphasised that quartering of soldiers who, together with their horses, must be well fed by the inhabitants of the houses concerned,

is likewise lawful, although it may be ruinous to the private individuals upon whom they are quartered.

Oppenheim, p. 180.

Limitations.

Non-combatants are exempt from personal injury, except in so far as it may occur incidentally in the course of the lawful operations of warfare, or be inflicted as a punishment for offences committed against the invaders.

Family honor and the lives of individuals are always to be respected. Yet if civilians travelling in a train containing soldiers are shot in an attack upon it by the enemy, or if women, children, and unarmed men are killed in the course of a bombardment, or during the capture of a village situated upon a battlefield, a regrettable incident has taken place, but no violation of the laws of war has been committed.

Lawrence, p. 416.

Exceptions.

But the protection and good treatment accorded to non-combatants is conditional on good behavior from them. They must not perform acts of war against the invaders while purporting to live under them as peaceful civilians. An inhabitant of an occupied district who cuts off stragglers, kills sentinels, or gives information to the commanders of his country's armies, may be, and probably is, an ardent and devoted patriot; but nevertheless the usages of war condemn him to death, and the safety of the invaders may demand his execution. There is nothing to this effect in the Hague Code. It was one of those questions on which agreement proved impossible at Brussels in 1874, and has remained impossible ever since. All that could be settled in 1907 was that such matters were to be ruled by custom, the laws of humanity, and the requirements of the public conscience. But there can be no doubt as to accepted usage. Every citizen of an invaded province can be either a combatant or a non-combatant. If he elects to fight, he must join the armed forces of his country, and will be entitled to the treatment accorded to soldiers. If he prefers to be a peaceful civilian, and go about his ordinary business, the enemy will be bound to leave him unmolested and protect him from outrage. But if he varies peaceful pursuits with occasional acts of hostility, he does so at the peril of his life.

Lawrence, pp. 419, 420.

We now come to the rights of the occupying state over private property in the occupied districts. Dealing first with immovables, we may lay down that as a general rule they are held to be incapable of appropriation by an invader. They are bound up with the territory. The profits arising from them are free from confiscation, and the owners are to be protected in all lawful use of them.

Lawrence, p. 440.

Exceptions.

But troops may be quartered in private houses, though the inhabitants may not be ejected from their homes to make more room for the soldiery. Moreover, the needs of actual conflict may justify the destruction of buildings or the use of them as fortified posts.

Lawrence, p. 440.

Best policy for inhabitants.

In warfare between civilized states it is found that, as a rule, nothing worse than temporary and severe inconvenience is experienced by those of the inhabitants of occupied districts who remain in their homes and live peaceably. They are able to take some care of their property, and can generally prevent wanton damage and destruction by promptly reporting any excesses to the officers in command. But those who abandon their dwellings and take to flight at the approach of the enemy are likely to find on their return little but the mere shell remaining. The houses will have been filled with soldiers from basement to garret, and their furniture and fittings will probably have been first subjected to the roughest treatment and then burnt for firewood. Unless there is some reason to anticipate personal violence, the best policy for the inhabitants in case of invasion is to stay at home and keep watch over their property. It can hardly escape diminution by means of requisitions and other exactions, but there can be no reason in the nature of things, and there is certainly none in the laws of war, why it should be destroyed.

Lawrence, pp. 440, 441.

Exceptions.

We must, however, add that this immunity, [of private property in occupied territory], like others we have considered, is conditional on quiet, peaceable, and regular behavior from the point of view of the military occupant. Seizure and destruction of personal property may follow on conviction of an offence against the rules laid down by the invader, such, for instance, as giving information to the dispossessed authorities, harboring their agents, or attacking their scouts and sentinels. Moreover, private movables are subject to severe, if orderly, exactions, which we will describe in the next section.

Lawrence, pp. 442, 443.

Limitations.

This article [46, Hague Regulations, 1907] applies both to the regulations which the invader may make by his prerogative of martial law and to the behaviour of his troops. By the prohibition of confiscation it is only meant that private property cannot by any regulation of the invader be taken from its owner for no other reason than that he is an enemy, not that it cannot be taken for military necessity or by way of punishment for disobedience to a regulation or a requisition. Speaking of the punishment which an enemy may inflict for such causes a learned writer has said that it ought to be in proportion to the importance of the cause, and never to be inspired by the spirit of vengeance, intimidation or cruelty. We however would rather say that, whatever may be thought of the right of a legitimate sovereign to inflict punishment as an expression of the vengeance of the community against outraged morality, an enemy occupant cannot justify punishment except for the purpose of intimidation, that is, to prevent others from doing the like. But the caution against cruelty and in favour of proportion is just.

For the rest, it is only movable property that an enemy as occupant can possibly confiscate. Immovable property (land) must necessarily remain subject to the laws of the sovereign who is restored or introduced at the peace.

Westlake, vol. 2, p. 103; Bonfils, 4th ed., p. 647.

Order issued by the Duke of Wellington at Irurita, July 9, 1813, Gurwood's Dispatches of the Duke of Wellington, IX, 168, 169.

Contra.

When the British evacuated Philadelphia, Congress decided that public property left by the British should belong to the United States, and that private property belonging to British subjects should belong to the State of Pennsylvania.

Moore's Digest, vol. 7, pp. 287, 288.

June 4, 1846, Marcy sent to General Taylor a proclamation in Spanish to be signed by Taylor and circulated in Mexico. Taylor was instructed to use his "utmost endeavors to have pledges and promises therein contained carried out to the fullest extent." In this proclamation the causes of the war are recited, and it is declared: "This war * * * will be prosecuted with vigor and energy against your army and rulers; but those of the Mexican people who remain neutral will not be molested. * * * We come to obtain reparation for repeated wrongs and injuries; we come to obtain indemnity for the past and security for the future; we come to overthrow the tyrants who have destroyed your liberties; but we come to make no war upon the people of Mexico, nor upon any form of free government they may choose to select for themselves. * * * Your religion, your altars and churches, the property of your churches and citizens, the emblems of your faith and its ministers, shall be protected and remain inviolate. Hundreds of our army, and hundreds of thousands of our people, are members of the Catholic Church. * * * We come among the people of Mexico as friends and republican brethren, and all who receive us as such shall be protected, whilst all who are seduced into the army of your dictator shall be treated as enemies. We shall want from you nothing but food for our army, and for this you shall always be paid in cash the full value."

Moore's Digest, vol. 7, pp. 273, 274; citing House, Ex. Doc. 119, 29 Cong., 2 sess. 14–17.

"The capitulation of the Spanish forces in Santiago de Cuba and in the eastern part of the province of Santiago and the occupation of the territory by the forces of the United States render it necessary to instruct the military commander of the United States as to the conduct which he is to observe during the military occupation.

"The first effect of the military occupation of the enemy's territory is the severance of the former political relations of the inhabitants and the establishment of a new political power. Under this changed condition of things the inhabitants, so long as they perform their duties, are entitled to security in their persons and property and in all their private rights and relations. It is my desire that the inhabitants of Cuba should be acquainted with the purpose of the United States to discharge to the fullest extent its obligations in this regard. It will therefore be the duty of the commander of the army of occupation to announce and proclaim in the most public manner that we

come not to make war upon the inhabitants of Cuba, nor upon any party or faction among them, but to protect them in their homes, in their employments, and in their personal and religious rights. All persons who, either by active aid or by honest submission, cooperate with the United States in its efforts to give effect to this beneficent purpose will receive the reward of its support and protection. Our occupation should be as free from severity as possible."

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain 1, 159.

Private property, whether belonging to individuals or corporations, is to be respected, and can be confiscated only for cause.

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain I. 159.

The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses.

Lieber, art. 37.

The troops should respect the life and honor of the inhabitants of the enemy's country, their property and family rights, and also their religion and their creed.

Art. 9, Russian Instructions, 1904.

United States rule.—The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; the persons of inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

U. S. Manual, p. 113.

Public worship must be permitted and religious convictions respected.

Edmonds and Oppenheim, art. 378.

It is the duty of the occupant to see that the lives of inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property are just as punishable as in times of peace.

Edmonds and Oppenheim, art. 383.

The real estate of individuals may not be appropriated or alienated, nor may it be used, let or hired for private or public profit.

Edmonds and Oppenheim, art. 409.

In his dealings with the population, the soldier is obliged to act with the same reserve as if he were on garrison duty in his own country.

Jacomet, p. 77.

The necessities of the conduct of operations may alone excuse injuries to private property. Thus it may become necessary, in attacking a city or village, to destroy the houses by artillery fire, to make embrasures in walls for the defense of a locality, to disturb planted areas in order to permit troops to pass, to cut down trees, etc.

Jacomet, p. 77.

Nevertheless, private property which might be utilized by the adversary for the purposes of the war may be temporarily seized. In every seizure of this kind a receipt should be delivered.

For instance, printing offices may be expropriated upon payment of an indemnity.

Jacomet, p. 78.

Article 46, Annex to Hague Convention IV, 1907, is substantially identical with section 195, Austro-Hungarian Manual, 1913.

After the surrender of New Orleans to General Butler, and the issuing of his proclamation of May 1, 1862, declaring that "all rights of property of whatever kind will be held inviolate, subject only to the laws of the United States," private property in the district under his command was not subject to military seizure as booty of war, though not exempt from confiscation under the acts of Congress as enemies' property, if in truth it was such.

Moore's Digest, vol. 7, p. 289, citing Planters' Bank *v.* Union Bank, 16 Wallace, 483.

It is by no means to be admitted that a conquering power may compel private debtors to pay their debts to itself, and that such payments extinguish the claims of the original creditor. The principle of international law, that a conquering state, after the conquest has subsided into government, may exact payment from the state debtors of the conquered power, and that payments to the conqueror discharge the debt, so that when the former government returns the debtor is not compellable to pay again, has no applicability to debts not due to the conquered state.

Moore's Digest, vol. 7, p. 313, citing Planter's Bank *v.* Union Bank, 16 Wall. 483. (See also Williams *v.* Bruffy, 96 U. S. 176.)

The court has never gone further in protecting the property of citizens residing during the rebellion in the Confederate States from judicial sale than to declare that where such citizen has been driven from his home by a special military order and forbidden to return, judicial proceedings against him were void.

Moore's Digest, vol. 7, p. 261, citing University *v.* Finch, 18 Wall. 106.

Contra. Title passes when capture is complete. Young v. United States, 97 U. S. 39, 60.

The Court said:

"The rightful capture of movable property on land transfers the title to the government of the captor as soon as the capture is complete, and it is complete when reduced to 'firm possession.' There is no necessity for judicial condemnation. In this respect, captures on land differ from those at sea."

A commanding general of the Federal forces at Memphis, in 1862, had the right to collect rents belonging to a citizen who had remained within the lines of the enemy, and to hold them subject to such disposition as might thereafter be made of them by the decisions of the proper tribunals.

Moore's Digest, vol. 7, p. 266, citing Gates *v.* Goodloe, 101 U. S. 612.

Incidental injury, through exercise of legitimate power.

As a matter of power, it is within the legitimate function of the War Department to establish and maintain its own telegraph line between Santiago and Havana, Cuba, and to transmit private messages over it, although the transaction of business of that nature may be in conflict with the vested rights of the International Ocean Telegraph Company. In the maintenance and operation of such line the military officers of the United States in Cuba are exercising a war power under a military occupation of territory wrested by arms from a belligerent. The question whether the business of the International Ocean Telegraph Company is thereby injuriously affected in contravention of its concession is one, the authority to determine which is not vested in the Attorney General.

Moore's Digest, vol. 7, pp. 263, 264, citing Syl., Griggs, At. Gen., March 18, 1901, 23 Op. 425.

OCCUPANT FORBIDDEN TO PILLAGE.

Pillage is formally forbidden.[1]—*Article 47, Regulations, Hague Convention IV, 1907.*

The four following articles, Articles 44 to 47 inclusive, are the Brussels Articles 36 to 39 inclusive, with some very slight changes. They set forth the recognized essential principles which must serve the invader and the occupant as a general rule of conduct in his relations with the population. These principles safeguard the honor and lives of individuals and their private property, whether individual or collective, as well as respect for religious convictions.

It appeared to the subcommission that these articles were well placed in this chapter before the provisions the purpose of which is to set legal limitations upon the actual power that the victor wields in the hostile country.

Besides, as Colonel Gross von Schwarzhoff remarked without contradiction, these limitations could not be deemed to check the liberty of action of belligerents in certain extreme circumstances which may be likened to a kind of legitimate defence.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 149.

The evils resulting from irregular requisitions and foraging for the ordinary supplies of an army, are so very great and so generally admitted, that it has become a recognized maxim of war, that the commanding officer who permits indiscriminate pillage, and allows the taking of private property without a strict accountability, whether he be engaged in offensive or defensive operations, fails in his duty to his own government, and violates the usages of modern warfare. It is sometimes alleged, in excuse for such conduct, that the general is unable to restrain his troops; but in the eyes of the law, there is no excuse; for he who cannot preserve order in his army, has no right to command it. In collecting military contributions, trustworthy troops should always be sent with the foragers, to prevent them from engaging in irregular and unauthorized pillage; and the party should always be accompanied by officers of the staff and administrative corps, to see to the proper execution of the orders, and to report any irregularities on the part of the troops. In case any corps should engage in unauthorized pillage, due restitution should be made to the inhabitants, and the expenses of such restitution deducted from the pay and allowances of the corps by which such excess is committed. A few examples of such summary justice, soon restores discipline to the army, and pacifies the inhabitants of the country or territory so occupied.

Halleck, p. 461.

[1] This article is identical with Article 47, Regulations, Hague Convention II, 1899, and with Article 39, Declaration of Brussels.

Booty belongs to State.

So much of the rights of mere booty, *loot*, or plunder, as the civilization of modern times has left, is restrained in its effects on all parties by the rule that it belongs primarily to the State, the captor taking only what is allowed him by the State, by express or implied permission.

Dana's Wheaton, p. 439, note 169.

Marauding must be checked by discipline and penalties.

Woolsey, p. 219.

The rule is now well established, that while all public moneys, military stores, and buildings are lawful plunder, [while all telegraph and railway property can be pressed into the captor's service], and while every edifice in the way of military movements,—whether, indeed, public or private,—may be destroyed, whatever does not contribute to the uses of war ought to remain intact.

Woolsey, p. 222.

The former custom of pillage was the most brutal among the recognized usages of war. The suffering which directly attended it was out of all proportion to the advantages gained by the belligerent applying it; and it opened the way to acts which shocked every feeling of humanity. In the modern usage however, so long as it is not too harshly enforced, there is little to object to. As the contributions and requisitions which are the equivalents of compositions for pillage are generally levied through the authorities who represent the population, their incidence can be regulated; they are moreover unaccompanied by the capricious cruelty of a bombardment, or the ruin which marks a field of battle. If therefore they are compared, not merely with universal pillage, but with more than one of the necessary practices of war, they will be seen to be relatively merciful. At the same time if they are imposed through a considerable space of territory, they touch a larger proportion of the population than is individually reached by most warlike measures, and they therefore not only apply a severe local stress, but tend, more than evils felt within a narrower range, to indispose the enemy to continue hostilities.

Hall, pp. 442, 443.

Pillage, or loot, was defined by General de Leer, at the Brussels Conference of 1874, as "booty which is not permitted"; and Baron Jomini explained that "there is a booty which is permissible on the field of battle—horses, &c. It is booty acquired at the expense of private property that the Commission means to prohibit," *Par. Paper*, Miscell. No. 1, 1875, p. 128.

Holland, p. 54.

Exceptions.

Private personal property which does not consist of war material or means of transport serviceable to military operations may not as a rule be seized. Articles 46 and 47 of the Hague Regulations expressly stipulate that "private property may not be confiscated," and "pillage is formally prohibited." But it must be emphasized

that these rules have in a sense exceptions, demanded and justified by the necessities of war. Men and horses must be fed, men must protect themselves against the weather. If there is no time for ordinary requisitions to provide food, forage, clothing, and fuel, or if the inhabitants of a locality have fled so that ordinary requisitions cannot be made, a belligerent must take these articles wherever he can get them, and he is justified in so doing. And it must further be emphasized that quartering of soldiers who, together with their horses, must be well fed by the inhabitants of the houses concerned, is likewise lawful, although it may be ruinous to the private individuals upon whom they are quartered.

Oppenheim, p. 180.

Booty belongs to State.

By the strict rules of International Law booty belongs to the state whose soldiers have captured it. They are acting as the agents and instruments of their government. What they do is done by its authority, and what they acquire is acquired on its behalf. War gives them no right to enrich themselves at the expense of the enemy. The spoil they take is not theirs but their country's. This was the ancient Roman theory, and it is the theory of the modern law of nations. But in practice, the regard paid to it is by no means as strict as could be wished, and it is impossible to prevent the appropriation of many articles taken as spoil of war.

Lawrence, p. 430.

Meanwhile humanity and enlightened self-interest combined to substitute for plunder a right to requisition from the inhabitants things necessary for the daily needs of the invading army, and a right to levy money contributions in the occupied territory. But humane commanders often found that they had a hard task in their attempts to stop pillage. When the Duke of Wellington entered the south of France in 1813 his prohibitions of plunder and license were often disregarded. He, therefore, threatened to send back the Spanish troops if they persisted in attempts to retaliate on French peasants for the havoc wrought in Spain by the armies of Napoleon. With his own troops he was still more severe. He sent to England under arrest several officers who had been guilty of marauding, and hanged private soldiers who plundered in defiance of his orders.

Lawrence, p. 433.

Definition.

Pillage, as an untechnical term, means indiscriminate plundering, such as under the old rule of *courir sus*, was habitually practised against the enemy. As a term of modern law it may be defined as the unauthorized taking away of property public or private.

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And it will be pillage if even what may be taken is taken in a way not authorized by the military authority, or if the individual captor appropriates to himself what by the regulations of his state or army he ought to give account of.

Westlake, vol. 2, pp. 103, 104

When buildings of absent owners are made use of, care should be taken that they are reasonably treated. The fact that the owners are away does not authorize pillage or damage. A note should be left if anything is taken. There is, however, no obligation to protect abandoned property, for to do so might require a very numerous body of men.

Edmonds and Oppenheim, art. 413.

Plundering is to be regarded as the worst form of appropriation of a stranger's property. By this is to be understood the robbing of inhabitants by the employment of terror and the abuse of a military superiority. The main point of the offense thus consists in the fact that the perpetrator, finding himself in the presence of the browbeaten owner, who feels defenseless and can offer no opposition, appropriates things, such as food and clothing, which he does not want for his own needs. It is not plundering but downright burglary if a man pilfers things out of uninhabited houses or at times when the owner is absent.

Plundering is by the law of nations to-day to be regarded as invariably unlawful. If it may be difficult sometimes in the very heat of the fight to restrain excited troops from trespasses, yet unlawful plundering, extortion, or other violations of property, must be most sternly punished, it matters not whether it be done by members of unbroken divisions of troops or by detached soldiers, so-called marauders, or by the "hyenas of the battlefields." To permit such transgressions only leads, as experience shows, to bad discipline and the demoralization of the army.

German War Book, p. 171.

Article 47, Annex to Hague Convention IV, 1907, substantially identical with section 196, Austro-Hungarian Manual, 1913.

OBLIGATIONS OF OCCUPANT AS TO COLLECTION AND DISBURSEMENT OF TAXES, DUES, AND TOLLS.

If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.[1]—*Article 48, Regulations, Hague Convention IV, 1907.*

The new Article 48, like Article 5 of the Brussels Declaration, provides that the occupant shall collect the *existing taxes*, and in this case prescribes that he must 'defray the expenses of the administration of the administration of the occupied territory to the same extent as the legitimate Government was so bound.' It may be observed that the new article adopts a conditional form. This wording was proposed by the reporter with a view to obtaining the support of Mr. Beernaert and other members of the subcommission who had expressed the fears with which every wording seemingly recognizing rights in an occupant as such inspired in them.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences," p. 150.

The army of occupation shall only collect the taxes, dues, duties and tolls imposed for the benefit of the State, or their equivalent, if it is impossible to collect them, and, as far as is possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the adminitration of the country to the same extent as the legitimate Government was so obligated.

Art. 5, Declaration of Brussels.

The occupant may collect, in the way of dues and taxes, only those already established for the benefit of the State. He employs them to defray the expenses of administration of the country, to the extent in which the legitimate government was bound.

Institute, 1880, p. 37.

Political laws, as a general rule, are suspended during the military occupation of a conquered territory. The political connection between the people of such territory and the state to which they belong is not entirely severed, but is interrupted or suspended so long as the occupation continues. Their lands and immovable property are, therefore, not subject to the taxes, rents, etc., usually paid to the former sovereign. These, as we have said elsewhere, belong of right to the conqueror, and he may demand and receive their pay-

[1] This article is substantially identical with Article 48, Regulations, Hague Convention II, 1899.

ment to himself. They are a part of the spoils of war, and the people of the captured province or town can no more pay them to the former government than thay can contribute funds or military munitions to assist that government to prosecute the war. To do so would be a breach of the implied conditions under which the people of a conquered territory are allowed to enjoy their private property, and to pursue their ordinary occupations, and would render the offender liable to punishment. They are subject to the laws of the conqueror, and not to the orders of the displaced government.

Halleck, p. 780.

He levies the taxes and customs, and after meeting the expenses of administration in territory of which he is in hostile occupation, he takes such sum as may remain for his own use.

Hall, p. 435.

Under the general right of control which is granted to an invader for the purposes of his war he has obviously the right of preventing his enemy from using the resources of the occupied territory. He therefore intercepts the produce of the taxes, of duties, and other assistance in money, he closes commercial access so as to blockade that portion of the territory which is conterminous with the occupied part, and forbids the inhabitants of the latter, under such penalties as may be necessary, from joining the armies of their country.

Hall, p. 496.

Taxes, &c., imposed by the State, are here distinguished from rates, &c., imposed by local authorities.

Holland, p. 54.

The words "imposed for the benefit of the State" in Article XLVIII are intended to exclude provincial and parochial taxes, or "rates" as they are called in England. The latter the occupant must not intercept; he can only supervise the expenditure of such revenue, to see that it is not devoted to a hostile purpose. The first charge upon the State revenue collected by the occupant is the cost of the local administration. When this has been provided for, any surplus that remains (and a surplus is probable, since the assessment is likely to have included a proportionate charge for the cost of the central government, and during the occupation "establishment charges" are saved) may be devoted to the purposes of the occupant. In 1898, President McKinley issued instructions to General Shafter after the fall of Santiago to collect the existing taxes—"unless others are substituted for them"—and to apply the proceeds "to the expenses of the government and of the army." If, as happened when the Japanese occupied Korea in 1904, the occupant leaves the existing civil administration in power, the latter should be allowed to collect and expend the revenues. The position of Korea was an anomalous one and is hardly likely to have a counterpart in future civilised wars, but it is instructive to note Japan's admission that taxation and administration are interdependent.

No new taxes should be imposed by the occupant, for the imposition of taxation is, in modern times, an attribute of sovereignty. This

rule was broken by the Turks in 1898 in Thessaly. They established the Turkish taxes on sheep, salt, and tobacco, and organised the customs on Turkish lines. But if the occupant cannot create taxes, he may levy requisitions and contributions, which serve the same end. Some of the Brussels delegates wished to give him the right to place the occupied country on the same footing, as regards taxation, as his own country or as the remainder of the enemy's country which is not occupied; on the ground that the occupied part ought not to be better treated than the unoccupied, or than the occupant's country. The result of this would be that, "if the Government of the invaded country demanded great sacrifices from its people in the shape of additional taxes, the invader would have the right to raise the taxation of the occupied district to the same level." It appears to have been the opinion of the Conference that no such right could be attributed to an occupant; at all events, the Article approved by the Conference is practically the same as Article XLVIII of the Hague.

It may happen that all the revenue and customs officials of the old government have fled on the approach of the invader, or that they refuse to serve him. In such a case, he is justified in making such alterations in the mode of recovery of the taxes and dues as will enable him to raise the same revenue as he could have raised had he had an expert collecting staff at his disposal. In 1870–1 the Germans replaced the indirect taxes in the occupied districts of France by direct taxes, assessing the latter at 150 per cent. of the old direct taxes. The practice they adopted is mentioned with approval in the French Official *Manuel*, which points out how impossible it is for an invader to secure the proceeds of registration, of stamp duties, and of other taxation of a complicated nature, if he is without the assistance of a *personnel* familiar with the work.

By providing that the occupant is to maintain the old rules as to assessment and incidence, Article XLVIII forbids him, by implication, to raise taxes before they become due. But to this obligation there is attached a corresponding right, in virtue of the same provision. If he must not levy taxes prematurely, neither must the legal government; and if the latter has called in the taxes before they were due, then the occupant is not bound to recognise the validity of the quittance. The payment made should in such a case be considered as a patriotic war contribution given by the inhabitants to their national government and not as normal taxation. The ordinary taxes remain due and may be demanded by the occupant at the proper time.

Spaight, pp. 378–380; Brussels B. B,, pp. 291, 161, 242; *R. D. I.*, September-October, 1898, p. 805.

The occupant may collect the taxes, dues, and tolls payable to the state; but he must make the proper administration of the occupied territory the first charge on the funds so obtained, and should employ the local officials if they are willing to act.

Lawrence, p. 438.

In levying contributions, whatever may be the object in view, the assessment in use for the purpose of ordinary taxation is to be followed as far as possible, and receipts are to be given to the con-

tributories. But there are no provisions for repaying them, and they cannot expect anything of the kind, unless their own government, by way of equalizing burdens, gives them compensation after the war from the general taxation of the whole country, as France did in 1871 to those who had borne the brunt of the German exactions.

Lawrence, p. 446.

As there would seldom be a law binding the legitimate government to any scale of expense, the scale existing at the date of the invasion would probably be understood as meant.

The wording of this article was slightly altered from that of B V in order not to seem to give the occupant a right to collect the taxes. But although framed hypothetically H XLVIII, by its separate mention of the taxes and of the consequence attached to their collection, still distinguishes between money exacted by the occupant under that name and the contributions of which we shall presently read. The origin of the distinction, which is generally maintained by writers on international law, no doubt lay in the old theory of occupation being conquest, so that the occupant, as the new sovereign, was entitled to the taxes due by the laws which he found established. This ground will not hold now, nor is there any other solid legal ground. If the proceeds of the taxes are already in a public treasury seized by the occupant, he takes them just as he takes the balance of the money in the treasury. If they are not, and he is not a new sovereign, will his physical power over the persons of the debtors entitle him to exact the payment to him of sums due to his enemy state, and to give them a discharge valid as against that state? There does not seem to be any juridical reason for so holding, and, if there were, the doctrine would be applicable to other debts due to the legitimate sovereign as well as to the taxes. But it is certainly equitable that if the usual administration is carried on it should be paid for by the usual taxes, and that the legitimate sovereign, on recovering his power over the district, should hold the inhabitants discharged by what they have paid to the occupant as such taxes.

Westlake, p. 105.

December 15, 1847, General Scott in Mexico ordered that, on the occupation of the principal point or points in any State, the payment of all the usual taxes due to the Mexican Government should be demanded of the proper civil authorities for the support of the army of occupation, except the rent derived from lotteries, the continuance of which he prohibited.

Moore's Digest, vol. 7, p. 285.

"Entertaining no doubt that the military right to exclude commerce altogether from the ports of the enemy in our military occupation included the minor right of admitting it under prescribed conditions, it became an important question, at the date of the order, whether there should be a discrimination between vessels and cargoes belonging to citizens of the United States and vessels and cargoes belonging to neutral nations.

"Had the vessels and cargoes belonging to citizens of the United States been admitted without the payment of any duty, while a duty was levied on foreign vessels and cargoes, the object of the order

would have been defeated. The whole commerce would have been conducted in American vessels, no contributions could have been collected, and the enemy would have been furnished with goods without the exaction from him of any contribution whatever, and would have been thus benefited by our military occupation, instead of being made to feel the evils of the war. In order to levy these contributions and to make them available for the support of the army, it became, therefore, absolutely necessary that they should be collected upon imports into Mexican ports, whether in vessels belonging to citizens of the United States or to foreigners.

"It was deemed proper to extend the privilege to vessels and their cargoes belonging to neutral nations. It has been my policy since the commencement of the war with Mexico to act justly and liberally toward all neutral nations, and to afford to them no just cause of complaint; and we have seen the good consequences of this policy by the general satisfaction which it has given."

President Polk, special message Feb. 10, 1848, Richardson's Messages of the Presidents, IV, 571.

As the result of military occupation the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the army.

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain, I, 159.

When existing rules may be disregarded.—If, due to the flight or unwillingness of the local officials, it is impracticable to follow the rules of incidence and assessment in force, then the total amount of the taxes to be paid may be allotted among the districts, towns, etc., and the local authorities be required to collect it as a capitation tax or otherwise.

U. S. Manual, p. 112.

Surplus may be used.—The first charge upon the State taxes is for the cost of local maintenance. The balance may be used for the purposes of the occupant.

U. S. Manual, p. 112.

What included in taxes, tolls, etc.—The words "for the benefit of the State" were inserted in the article to exclude local dues collected by local authorities. The occupant will supervise the expenditure of such revenue and prevent its hostile use.

U. S. Manual, p. 112.

The financial administration passes into the hands of the occupant, but all fiscal laws remain operative. If he collect the taxes, dues, and tolls payable to the State, he is in consequence bound to defray the expenses of the administration of the occupied territory to the same extent as the national government was liable. The col-

lection must be made, as far as is possible, in accordance with the rules in existence and the assessment in force. The occupant is entitled to appropriate to the use of the army any balance remaining over after the disbursement of these expenses. The occupant may use local rates only for the purposes for which they are raised.

Edmonds and Oppenheim, art. 369.

The invader should not change the way of collecting taxes unless compelled to do so by the flight and ill-will of the officials.

Edmonds and Oppenheim, art. 371.

If the salaries of the clergy are paid by the State they must be continued.

Edmonds and Oppenheim, art. 378.

The salaries of officials who continue to do duty must be paid by the occupant if he collects the taxes of the occupied territory.

Edmonds and Oppenheim, art. 402.

If, in practice, the occupier is unable to act thus (for instance, in case of the departure of the treasury officials), he shall sum up the revenues from all taxes and determine the quota of the various local districts.

Jacomet, p. 72.

According to this juristic view the military administration of the conqueror disposes of the public revenue and taxes which are raised in the occupied territory, with the understanding, however, that the regular and unavoidable expenses of administration continue to be defrayed.

German War Book, p. 168.

The financial administration of the occupied territory passes into the hands of the conqueror. The taxes are raised in the preexisting fashion.

German War Book, p. 184.

Out of the revenue of the taxes the costs of the administration are to be defrayed, as, generally speaking, the foundations of the State property are to be kept undisturbed.

German War Book, p. 184.

Article 48, Annex to Hague Convention IV, 1907, is substantially identical with section 197, Austro-Hungarian Manual, 1913.

CONTRIBUTIONS, PURPOSES FOR WHICH OCCUPANT MAY LEVY.

If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.[1]—*Article 49, Regulations, Hague Convention IV, 1907.*

The four next articles, 49 to 52 inclusive, deal with *extraordinary contributions*, with *fines*, and with *requisitions*, and take the place of Articles 40 to 42 inclusive of the Brussels Declaration. Quite a divergence of views on the subject of these articles was evidenced in the debate.

On motion of Mr. Bourgeois, seconded by Mr. Beldiman, the question was referred to the drafting committee with an instruction to set forth in a new text only the points on which an agreement seemed possible.

The committee, of which Mr. Bourgeois was chairman, made a thorough study of these questions with the active assistance of Messrs. Beernaert, vanKarnebeek, and Odier, and it ascertained that agreement certainly existed on three important points concerning the levying of contributions of any kind in hostile territory. These three points are the following:

1. Every order to collect contributions should emanate from a responsible military chief, and should be given, as far as possible, in writing.

2. For all collections, especially those of sums of money, it is necessary to take into account as far as possible the distribution and assessment of the existing taxes.

3. Every collection should be evidenced by a receipt.

The committee next discussed the question whether it should confine itself to giving expression to these three purely formal conditions and to determining to what extent they are applicable to the requisitions in kind or money and the fines required by the occupant. It came to the conclusion that, relying on the general considerations indicated at the beginning of this report, as being of a nature to dispose of the objections stated by Mr. Beernaert, it would be not only possible but also highly desirable to state certain principles on the lines of Articles 40 to 42 of the Brussels Declaration, that is to say, concerning the limitations to be placed on the actual power which the invader exercises against the legal authorities and which in its tendency weakens the principle of respect for private property. The rules to be laid down relate to three categories of acts: (*a*) Requisitions for payments in kind (money being excepted), and for personal services, or in other words, 'requisitions in kind and services' (Article 51); (*b*) The levying and collection of contributions of money beyond the existing taxes (Article 49); (*c*) The imposition and collection of what are improperly called 'fines' (Article 50).

[1] This article is substantially identical with Article 49, Regulations, Hague Convention II, 1899.

(*a*) As to *requisitions in kind and services*, it has been admitted that the occupant can not demand them from communes or inhabitants except 'for the needs of the army of occupation.' This is the rule of necessity; but this necessity is that of maintaining the army of occupation. It is no longer the rather vague criterion of 'necessities of war' mentioned in Article 40 of the Brussels project under which, strictly, the country might be systematically exhausted.

It has been fully agreed to retain the provision of Article 40 of the Brussels Declaration which requires that the requisitions and services shall be 'in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in the operations of the war against their country.'

It was necessary to recognize that one of the three formal conditions mentioned above, that of collection 'following the local rules of distribution and assessment of taxes,' although applicable in a certain degree to contributions in personal services, is evidently not applicable to requisitions in kind properly so called, that is to say, the requisition of particular objects in the hands of their owners either to make temporary use of them or for consumption. The committee therefore thought, and the subcommission agreed thereto, that some limitation should be stated here so that the requisitions and services demanded will be 'in proportion to the resources of the country.'

There remain two other formal conditions that were agreed upon, one respecting the order for the collection and the other respecting the receipt. These two conditions already appeared in Article 42 of the Brussels project, and the committee had little to do beyond reproducing them. In conformity with the Brussels text, it has been agreed that the requisition orders must emanate only from the commander on the spot, but that in this case the requirement of a written order would be excessive. Military necessities are opposed to demanding for ordinary daily requisitions a higher authority than that of the officer on the spot, and a written order would be superfluous in view of the obligation to give a receipt. Lastly, the wording agreed upon in the matter of requisitions recommends the rule of payment therefor in money, although such payment is not made a hard and fast obligation. Such payments will ordinarily take place under the form of real purchases instead of requisitions. And it is to be noted that this will often be not only a method of strict humanity but also commonly one of shrewd policy, if only to deter the people from hiding their provisions and produce. Besides, the army of occupation will obtain in the same country the money necessary for payments on account of requisitions or purchases by means of contributions whose weight will be distributed over all, whilst requisitions without indemnity strike at random upon isolated individuals.

(*b*) As to the *money contributions* that the occupant may wish to collect beyond the regular taxes, the subcommission at the instance of the drafting committee agreed upon the very interesting and valuable rule for occupied territory, that except in the special cases of fines, which are the subject of a separate article, these contributions can, like requisitions, be levied 'for the needs of the army' alone. The only other legitimate motive for collecting these contributions would lie in the administrative needs of the occupied territory, and the population thereof evidently can not make a just complaint on that score. On the whole what is forbidden is levying contribu-

tions for the purpose of enriching oneself. It is important to state that this formula is more stringent than that of Article 41 of the Brussels Declaration; and right here is a point that received the especial attention of those members of the subcommission who, being properly interested by the situation of their countries, showed themselves above all solicitous to restrain as far as possible by legal rules the absolute liberty of action that success in arms actually gives to an invader. The three formal conditions indicated above (the order for collection, the collection, and the receipt) have unlimited application to these contributions but it seemed best to insert them in a special article applicable to every collection of money.

(*c*) As to *fines*, a separate article seemed necessary in order that it might be determined as exactly as possible in what cases it is proper to impose fines.

In the view of the committee the word *fines* itself is not quite apt because it lends itself to confusion in thought with penal law. Certain members of the committee have even urged that the use of the word 'repression' be avoided.

According to the point of view at first taken by the subcommission, this article ought to deal only with what is given the special designation 'fines' in the law of war, that is a particular form of extraordinary contribution consisting in the collection of sums of money by the occupant for the purpose of checking acts of hostility. On this subject the subcommission was unanimously of opinion that this means of restraint which strikes the mass of the population ought only to be applied as a consequence of reprehensible or hostile acts committed by it as a whole or at least permitted by it to be committed. Consequently, acts that are strictly those of individuals could never give rise to collective punishment by the collection of extraordinary contributions, and it is necessary that in order to inflict a penalty on the whole community there must exist as a basis therefor *at the very least a passive responsibility therefor* on the part of the community. Having proceeded thus far upon this course, the drafting committee first, and then the subcommission, thought they could go still further and, without prejudging the question of reprisals, declare that this rule is true, not only for fines, but for every penalty, whether pecuniary or not, that is sought to be inflicted upon the whole of a population.

Finally, the subcommission approved the special Article 52 proposed by the committee, concerning the three formal rules applicable to every collection whatever of sums of money by the occupant.

It is on the strength of the foregoing considerations that the subcommission has adopted with only a few slight modifications in form Articles 49 to 52 of the text proposed to it by the drafting committee.

It is also proper to say that these provisions have been voted unanimously with the exception of the vote of the delegate of Switzerland on Articles 51 and 52. That delegate had proposed in behalf of his Government that the right to claim payment or reimbursement *on the evidence of the receipts* be expressly stipulated in these articles. The subcommission thought that such a stipulation would be out of place in the proposed Declaration as it relates rather to internal public law and will naturally be the subject of one of the clauses of the treaty of peace.

Report to Hague Conference, 1899, from the Second Commission, "Reports to the Hague Conferences, 150–152.

In the *second* place we have a right to make the enemy's country contribute to the expenses of the war. Troops, in the enemy's country, may be subsisted either by regular magazines, by forced requisitions, or by authorized pillage. It is not always politic, or even possible, to provide regular magazines for the entire supplies of an army during the active operations of a campaign. Where this cannot be done, the general is obliged either to resort to military requisitions, or to entrust their subsistence to the troops themselves. The inevitable consequences of the latter system are universal pillage, and a total relaxation of discipline; the loss of private property, and the violation of individual rights, are usually followed by the massacre of straggling parties, and the ordinary peaceful and non-combatant inhabitants are converted into bitter and implacable enemies. The system is, therefore, regarded as both impolitic and unjust, and is coming into general disuse among the most civilized nations,—at least for the support of the main army. In case of small detachments, where great rapidity of motion is requisite, it sometimes becomes necessary for the troops to procure their subsistence wherever they can. In such a case, the seizure of private property becomes a necessary consequence of the military operations, and is, therefore, unavoidable. Other cases, of similar character might be mentioned. But even in most of these special and extreme cases, provisions might be made for subsequently compensating the owners for the loss of their property.

Halleck, p. 458.

The occupying army may levy forced contributions on personal property, whether it be directly usable in war or not, as on the money of citizens of the conquered country, to meet its own necessities. In short, it may, if it sees fit, support itself on the resources of the invaded and occupied country.

Dana's Wheaton, p. 439, note 169.

Contributions and requisitions are still permissible, on the plea, first, that they are a compensation for pillage, or an equitable repartition of what would accrue from this source,—which, if pillage is wrong, is no plea at all;—and again that they are needed for defraying the expenses of governing a conquered province, which is a valid plea when conquest has been effected, but not before; and thirdly, on the plea that in a just war it is right to make the "enemy's country contribute to the support of the army, and towards defraying all the charges of the war."

Woolsey, pp. 219, 220; Vattel, iii., 9. sec. 165.

The wars of Napoleon were marked by the enormous contributions which were levied upon invaded countries, producing amounts nearly large enough to save the necessity of increased taxes upon France itself. The rule with Bonaparte was to make the war pay for the war. Thus, after the battle of Jena, in 1806, the contribution upon humbled Prussia was more than a hundred millions of francs: half that sum was imposed on the province of Valencia, after Suchet's conquest of it in 1812, and the conquering army was to have a donative of two hundred millions besides, to be collected chiefly from the same quarter of Spain.

During his Peninsular wars, Wellington was among friends,—where all codes require private property to be respected,—until he entered France in 1813, and there policy, if nothing else, demanded the observance of the same rule. But he seems to have regarded requisitions as iniquitous, and when the ministry at home proposed that he should adopt them, he opposed the system, as needing terror and the bayonet to carry it out,—as one for which the British soldier was unfit, and as likely to injure those who resorted to it. The right to levy contributions was again enforced by the Prussians in the war of 1848 with Denmark, but it slumbered, we believe, in the Crimean war of the allies against Russia.

Woolsey, p. 219.

Contributions are forced payments of money, exacted from a conquered territory, over and above the taxes used for its own government. They can be levied only by officials of the highest authority. They are a relic of the ancient right of a conqueror to the private property of the conquered. The Prussians in Austria, 1866, and the Germans in France, 1870, made use of contributions.

Woolsey, p. 220.

The regulated seizure of private property is effected by the levy of contributions and requisitions. Contributions are such payments in money as exceed the produce of the taxes, which, as has been already seen, are appropriated as public property.

Hall, p. 443.

No usage is in course of formation tending to abolish or restrain within specific limits the exercise of the right to levy contributions and requisitions. The English on entering France in 1813, the army of the United States during the Mexican War, and the Allied forces in the Crimea, abstained wholly or in the main from the seizure of private property in either manner; but in each case the conduct of the invader was dictated solely by motives of momentary policy, and his action is thus valueless as a precedent. There is nothing to show that the governments of any of the countries mentioned have regarded the levy of contributions and requisitions as improper; and that of the United States, while allowing its generals in Mexico to use their discretion as to the enforcement of their right, expressly affirmed it in the instructions under which they acted. One of the articles of the proposed Declaration of Brussels, had it become law, would have deprived an invader of all right to levy contributions except in the single case of a payment in money being required in lieu of a render in kind, and would therefore have enabled him at a maximum to demand a sum not greater than the value of all articles needed for the use and consumption of the army and not actually requisitioned. But so long as armies are of the present size it may be doubted whether the inhabitants of an occupied territory would gain much by a rule under which an invader would keep possession of so liberal a privilege; and though the representatives of some minor states put forward the view that a belligerent ought to pay or definitely promise to pay for requisitioned articles, the scheme of declaration as finally settled gave to the right of requisition the entire scope which is afforded by the so-

called "necessities" of war. It must not be forgotten that in the war of 1870–1 the right of levying contributions and requisitions was put in force with more than usual severity.

The subject of the appropriation of private property by way of contribution and requisition can not be left without taking notice of a doctrine which is held by a certain school of writers, and which the assailants of the right of maritime capture use in the endeavor to protect themselves against a charge of inconsistency. It is denied that contributions and requisitions are a form of appropriation of private property. As pillage is not now permitted, payments in lieu of it must, it is said, have become illegal when the right to pillage was lost; a new "juridical motive" must be sought for the levy of contributions and requisitions; and it is found in "a right, recognized by public law as belonging to an occupying belligerent, to exercise sovereign authority to the extent necessary for the maintenance and safety of his army in the occupied country, where the power of the enemy government is suspended by the effect of his operations." Private property is thus not appropriated, but "subjected to inevitable charges" laid upon it in due course of ordinary public law. It is not the place here to discuss the assertion that an invader temporarily stands in the stead of the legitimate sovereign. It is enough for the moment to say that the legal character of military occupation will be shown later to be wholly opposed to the doctrine of such substitution, that in order to find usages of occupation which require that doctrine to explain them it is necessary to go back to a time of less regulated violence than the present, that taking occupation apart from any question as to contributions and requisitions practice and opinion have both moved steadily away from the point at which substitution was admitted, and that thus the theory which affects to be a progress is in truth a retrogression. On the minor point of the alleged necessity of the charges laid by way of contribution and requisition on the population of an occupied territory, it can hardly be requisite to point out that no such necessity exists. It is often impracticable to provide subsistence and articles of primary necessity for an army without drawing by force upon the resources of an enemy's country; labor is often urgently wanted, and when wanted it must be obtained; but there is nothing to prevent a belligerent from paying on the spot or giving acknowledgments of indebtedness binding himself to future payment. If a state can not afford to pay, it simply labors under a disadvantage inseparable from its general position in the world, and identical in nature with that which weighs upon a country of small population or weak frontier. Whether states can not or will not pay, fictions can not be admitted into law in order to disguise the fact that private property is seized. That its seizure is effective, and that seizure as now managed is a less violent practice than many with which belligerent populations unhappily become familiar, has been already said. It may be indulged in without shame while violence is legitimate at all; and so long as the practice lasts, it will be better to call it honestly what it is than to pretend that it is authorized by a right which a belligerent does not possess and a necessity that does not exist.

Hall, pp. 445–448.; Bluntschli *Du Droit du Butin, Rev. de Droit Int.* ix, 545.

The occupant is not to levy contributions for the mere purpose of enriching himself.

It may sometimes be justifiable to levy a money contribution on one place, in order to spend it on the purchase of requisitions in kind at another place. The burden of the war may thus be more equitably distributed, falling on the inhabitants generally, rather than upon individual owners of the property which may be required.

Holland, p. 55.

Usually, as I have said, the taxes of the old Government ought to be sufficient to meet the expenses of the administration of the occupied territory. But it may happen otherwise, and then the occupant is entitled to procure the necessary additional funds by means of Contributions of War—"extraordinary contributions," as opposed to ordinary taxation, to use the term applied to them in the Report of the examining Committee of the first Hague Conference. The occupant has further the war right, founded on usage—for the *Règlement* confers no rights on an occupant, it only restricts and regulates those which custom gives him—of providing for the needs of his army by levying contributions from the inhabitants of the occupied territory. "The needs of his army"—these words indicate the sole legitimate object, as well as the quantitative limit, of the levy. It is unlawful for the occupant to seek by such a method, to replenish his national treasury; any contributions imposed must be imposed to supply the wants of the occupying army. Of course there will result therefrom a saving to the occupying belligerent's exchequer, which is thus relieved of the cost of maintenance of the army of occupation. But so long as not more than the cost of such maintenance may be exacted from the occupied territory, the extent of the contributions is kept within bounds, and as the occupying belligerent cannot be certain that he will not eventually be forced, by the fortune of war, to pay his opponent a war indemnity in which the contributions will be taken into account, he is usually led by self-interest to keep the amount of his exactions well within the regulated limits.

Spaight, p. 382.

Contribution is a payment in ready money demanded either from municipalities or from inhabitants, whether enemy subjects or foreign residents.

Oppenheim, vol. 2, p. 186.

Unlike requisitions, which may be demanded by the commander on the spot, contributions are not to be collected except on the responsibility of the General in command, and under a written order. He may levy them for the needs of the army of occupation, or for the expenses of the administration of the occupied territory. It will be remembered that the ordinary taxes are paid into the treasury of the invader, who is bound to use them for administrative purposes to the same extent as the dispossessed government. Unless, therefore, the yield from the usual sources of revenue is extraordinarily small, there will be no need of contributions for the everyday work of keeping order and doing justice between man and man. But the permission to take them for the needs of the army of occupation opens out a wide possibility of exaction. It is quite true that a contribution

in money may sometimes be less irksome than a render in kind, and may indeed go further if the sum made over is spent in an advantageous purchase of supplies; but it is also true that a whole province may be impoverished by pecuniary demands that come within the letter of the Hague Regulations. Suppose, for instance, that a poor but warlike state invaded a neighbor and gained initial successes. It might maintain its forces and keep up their military equipment for a long time by constantly levying contributions "applied to the needs of the army." Thus the Napoleonic principle of making the war support itself might be carried out with rigor, while the letter of the rules formulated at the Conferences of 1899 and 1907 was strictly observed. In this particular matter the Regulations protect inhabitants of occupied districts against pecuniary exactions levied merely for the enrichment of states or individuals; and doubtless this is a great gain. But, literally interpreted, they do not prevent a country from charging the largest share of the expenses of its war on the unfortunate inhabitants of districts overrun by its armies.

Lawrence, p. 445.

B XLI ran that "the enemy in levying contributions, whether as equivalents for taxes or for payments which should be made in kind or as fines, will proceed as far as possible according to the rules," etc. (see H LI). The "payments which should be made in kind" are those which H XLIX contemplates as being levied for military necessities, and that H XLIX was not intended to prohibit fines is shown by H L regulating them. B XLI is not therefore at variance with H XLIX in respect of the objects for which it contemplates the levy of money contributions, but the later article marks a step in advance in expressly limiting them to those objects. The invader must not exact them in order further to eke out the cost of the war.

Westlake, vol. 2, p. 105.

Ransom.

It must be observed that H XLIX and H L have nothing to do with a payment in the nature of ransom, which an invader may make the condition of sparing to a place not yet occupied the mischief that would result from a lawful operation of war.

Westlake, vol. 2, p. 106.

The restriction which places modern opinion in the sharpest contrast to what was common as late as the early part of the nineteenth century is that by which H XLIX, as we have seen, limits contributions, so far as not expended on the administration of the occupied territory, to an equivalent for requisitions. Where the things or services which an army wants in kind for its use are to be found or obtained in the territory, it may be better both for itself and for the population that it shall levy the amount of their price and buy them or pay for them than that it should take them without payment from their owners or from those who can render them. The burden is then more equally distributed, and the things and services themselves may be more easily obtained in the requisite quantities. It was not intended by H XLIX to permit the levy of money to be spent in the invader's own country in supplying the necessities of his army. The provision made at home must be borne by him out of his general resources, except so far as he may be able to recover its cost from the

enemy as a war indemnity at the peace. The exactions which he makes as an occupant are not to be the means, as they were often made to be, of increasing his general ability to carry on the war. The line thus drawn, it is true, is not to be deduced from the principle that the passive citizen may be made to suffer only what it is "necessary" or "natural" for the enemy of his state to do in order to break down the resistance of his state, even when it is guarded by the qualification, necessary or natural in the course of military operations. But it is a practical alleviation of the application of that principle, and it can only be made a tangible line by insisting, first, on the limitation of requisitions to the consumption or immediate use of the occupying army, and secondly, on a limitation of contributions which which makes them a substitute for requisitions so limited.

Westlake, vol. 2, pp. 111, 112.

"No principle is better established than that a nation at war has the right of shifting the burden off itself and imposing it on the enemy by exacting military contributions. The mode of making such exactions must be left to the discretion of the conqueror, but it should be exercised in a manner conformable to the rules of civilized warfare.

"The right to levy these contributions is essential to the successful prosecution of war in an enemy's country, and the practice of nations has been in accordance with this principle. It is as clearly necessary as the right to fight battles, and its exercise is often essential to the subsistence of the army."

President Polk, special message, Feb. 10, 1848, Richardson's Messages, IV, 571.

"While it is held to be the right of the conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by conquest, and to apply the proceeds to defray the expense of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contribution to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the army."

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain I, 159.

New taxes not to be levied.—The imposition of taxes being an attribute of sovereignty, no new taxes should be imposed by the occupant. The occupant may, however, levy contributions and requisitions.

U. S. Manual, p. 112.

Cash, over and above taxes, may be requisitioned from the inhabitants, and is then called a "contribution." The occupant may not, however, levy a contribution for the purpose of enriching himself, and it can only be applied to the needs of the army or of the administration of the territory in question.

Edmonds and Oppenheim, art. 423.

War levies are therefore only allowed:

1. As a substitute for taxes.

2. As a substitute for the supplies to be furnished as requisitions by the population.

3. As punishments.

As to 1: This rests upon the right of the power in occupation to raise and utilize taxes.

As to 2: In cases where the provision of prescribed objects in a particular district is impossible, and in consequence the deficiency has to be met by purchase in a neighboring district.

German War Book, p. 178.

Article 49, Annex to Hague Convention IV, 1907, is substantially identical with section 198, Austro-Hungarian Manual, 1913.

GENERAL PENALTY FOR ACTS OF INDIVIDUALS, FORBIDDEN TO OCCUPANT.

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.[1]—*Article 50, Regulations, Hague Convention IV, 1907.*

[For the statements concerning Article 50, Hague Convention II, 1899, contained in "Reports to the Hague Conferences," see the discussion above, under Article 49, Hague Convention IV, 1907.]

Exception—imperative military necessity.

It has been confessed that it is impossible to set bounds to the demands of military necessity; there may be occasions on which a violent repressive system, like that from which the foregoing examples have been drawn, may be needed and even in the end humane; there may be occasions in which the urgency of peril might excuse excesses such as those committed by Napoleon in Italy and Spain. But it is impossible also not to recognize that in very many cases, probably indeed in the larger number, the severity of the measures adopted by an occupying army is entirely disproportioned to the danger or the inconvenience of the acts which it is intended to prevent; and that when others than the perpetrators are punished, the outrage which is done to every feeling of justice and humanity can only be forgiven where military necessity is not a mere phase of convenience, but an imperative reality.

Hall, pp. 491–493.

Hostages to guarantee order.

Hostages are sometimes seized by way of precaution in order to guarantee the maintenance of order in occupied territory. The usage which forbids that the life of any hostage shall be taken, for what ever purpose he has been seized or accepted, and which requires that he shall be treated as a prisoner of war, renders the measure unobjectionable; but in proportion as it is unobjectionable it fails to be deterrent. The temporary absence of a deposit which must be returned in the state in which it was received can only prevent action where it is a necessary means to action; and the detention of hostages when they are treated in a legal manner can only be of use if it totally deprives a population of its natural leaders. Hence the seizure of hostages is less often used as a guarantee against insurrection than as a momentary expedient or as a protection against special dangers, which it is supposed can not otherwise be met. In such cases a belligerent is sometimes drawn by the convenience of intimidation into acts which are clearly in excess of his rights. In 1870 the Ger-

[1] This article is substantially identical with Article 50, Regulations, Hague Convention II, 1899.

mans ordered that 'railways having been frequently damaged, the trains shall be accompanied by well-known and respected persons inhabiting the towns or other localities in the neighborhood of the lines. These persons shall be placed upon the engine, so that it may be understood that in every accident caused by the hostility of the inhabitants, their compatriots will be the first to suffer. The competent civil and military authorities together with the railway companies and the etappen commandants will organize a service of hostages to accompany the trains.' The order was universally and justly reprobated on the ground that it violated the principle which denies to a belligerent any further power than that of keeping his hostage in confinement; and it is for governments to consider whether it is worth while to retain a right which can only be made effective by means of an illegal brutality which existing opinion refuses to condone.

Hall, pp. 493, 494; D'Angeberg, No. 686; Calvo, ii, 1868–71.

Collective punishment usually takes the form of a pecuniary levy or fine; but, although Article L appears among the provisions relative to levies in money or kind, and the treatment of hostile property generally, it was intended to, and does in terms, apply to any kind of collective punishment. Of all the punishments used by war law, fines are the commonest and in many ways the most satisfactory and humane.

Spaight, p. 408.

Exceptions—reprisals and hostages.

Whoever does not comply with his commands, or commits a prohibited act, may be punished by him; but article 50 of the Hague Regulations expressly enacts the rule that *no general penalty, pecuniary or otherwise, may be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.* It must, however, be specially observed that this rule does not at all prevent reprisals on the part of belligerents occupying enemy territory. In case acts of illegitimate warfare are committed by enemy individuals not belonging to the armed forces, reprisals may be resorted to, although practically innocent individuals are thereby punished for illegal acts for which they are neither legally nor morally responsible—for instance, when a village is burned by way of reprisal for a treacherous attack committed there on enemy soldiers by some unknown individuals. Nor does this new rule prevent an occupant from taking hostages in the interest of the safety of the line of communication threatened by guerillas not belonging to the armed forces, or for other purposes, although the hostage must suffer for acts or omissions of others for which he is neither legally nor morally responsible.

Oppenheim, vol. 2, p. 212.

Collective responsibility.

At first sight these words [of article 50, Hague Convention IV, 1907] would seem to forbid all severities against local authorities or populations in the aggregate; but the last phase points towards a modification of this view. For by prohibiting such penalties when the community cannot be held collectively responsible, it allows them

inferentially when responsibility can be brought home. If a detachment occupying a village were slaughtered in the night while asleep, few would venture to argue that the community had no collective responsibility, should a conspiracy of silence baffle all attempts to discover the actual perpetrators of the massacre. On the other hand, if a train were derailed in the night while passing through a wild ravine far from human habitation, few would accept the doctrine that the population for miles around must have known of the deed and assisted in it directly or indirectly. It resolves itself into a matter of evidence, though the proof must necessarily be of that rough and ready kind which alone is possible in warfare. When the complicity of the inhabitants is evident either by direct proof or from the circumstances of the case, they are not protected by the article we are discussing, and retribution could hardly take a milder form than a pecuniary fine. The Germans in France during the war of 1870, and the British in South Africa during the Boer War, levied such fines when the responsibility of the population was more constructive than actual. But it must be noted that there was no Hague Code in existence when the former conflict was fought, and also that the Boer republics had not been allowed to take part in the Peace Conference of 1899, which made the rules it drew up binding on the signatory powers only in their wars with one another. In neither case, therefore, were the combatants under any obligation to observe the Hague Regulations. Had they been so bound, we may hold that they ought to have abstained not only from levying fines when it was impossible to bring home responsibility to the inhabitants generally, but also from other forms of collective penalty to which resort was sometimes had in the like case. We refer to the destruction of houses and farms and the compulsion put on the principal inhabitants to make them ride on the military trains running through their districts. Such severities may be justified under the terms of Article 50 when it is evident that the whole population sympathizes with the doers of the acts complained of and protects them from capture, but not otherwise. No general can be expected to sit down quietly and do nothing, while his sentinels and scouts are cut off, and his convoys intercepted in a district which is, in theory, engaged under his protection in the pursuits of peaceful industry. But he is bound to make every effort to discover the actual offenders, and only when he fails through the determination of the inhabitants to screen them ought he to apply such general penalties as fines, burnings, and the seizure of hostages. This view of the Hague Regulation that deals with the matter regards it as allowing reprisal in the form of general penalties when there is no doubt about collective responsibility, while forbidding anything of the kind if no such responsibility can be established. Professor Oppenheim,[1] however, and also Professor Holland,[2] take the ground that Article 50 has no bearing on reprisal, and simply provides for cases in which the question of it does not arise. If this view be correct, the commander of an occupying force is free to inflict any kind of severity on a district he has overrun, if only he bethinks himself of saying that it is done by way of reprisal for certain unlawful acts perpetrated by inhabitants or with their connivance. An article that can be circumvented

[1] International Law, vol. 2, p. 175.

[2] The Law of War on Land, p. 55.

so easily is hardly worth enacting. It is better to deduce the exceptions to a rule from its own principles than to set it aside at will on account of extraneous considerations.

Lawrence, pp. 447–449.

General insurrection.

A case apart from all the others, and least likely of any to be treated with leniency, occurs when the inhabitants of occupied districts break out into a general insurrection against the invaders. The army of occupation is obliged for the sake of its own safety to treat such insurgents with the utmost severity. The codes of the Brussels Conference and the two Hague Conferences are silent on the subject of the fate in store for them, and so is the manual of the Institute of International Law, while Article 85 of the Instructions for the Armies of the United States renders them liable to the death penalty under the name of "war rebels." The constant conflict between the views of the great military powers and the secondary states always became more marked than usual when their treatment was discussed. In consequence no mention was made of the matter in the *Règlement* attached to the Hague Convention with respect to the Laws and Customs of War on Land; but there can be no doubt that an invader is allowed by the laws of war, as deduced from usage, to treat all concerned in such risings as unauthorized combatants. Indeed, this proposition is not seriously controverted. The objections raised are directed against any verbal recognition of it that would seem tantamount to a surrender of high-souled patriots by their own government to the enemy's executioners.

Lawrence, pp. 516, 517.

For example, no penalty, whether in money or in services, can be imposed on a district which it is claimed has been constructively occupied by virtue of a notice posted at some point of it, if such notice could not come to the knowledge of the district as a whole before the act which it is desired to punish was committed. Nor can a penalty be imposed on a district more extensive than can justly be supposed to share the responsibility for the act which it is desired to punish.

Westlake, vol. 2, p. 106.

Collective punishment authorized.—Collective punishments may be inflicted for such offenses as the community has committed or permitted to be committed. Such offenses are not necessarily limited to violations of the laws of war. Any breach of the occupant's proclamations or martial-law regulations may be punished collectively. For instance, a town or village may be held collectively responsible for damage done to railways, telegraphs, roads, and bridges in the vicinity. The most frequent form of collective punishment consists in fines.

U. S. Manual, p. 123.

No collective penalty, pecuniary or otherwise, may, however, be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible.

Edmonds and Oppenheim, art. 385.

A contribution should not be exorbitant and may no longer be used as a means of pressure or of punishment.

Edmonds and Oppenheim, Art. 424.

Reprisals.

Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible, it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified.

What kinds of acts should be resorted to as reprisals is for the consideration of the injured party. Acts done by way of reprisals must not, however, be excessive and must not exceed the degree of violation committed by the enemy.

Edmonds and Oppenheim, Arts. 458, 459.

War levies are therefore only allowed:

1. As a substitute for taxes.
2. As a substitute for the supplies to be furnished as requisitions by the population.
3. As punishments.

German War Book, p. 178.

Article 50, Annex to Hague Convention IV, 1907, is substantially identical with section 199, Austro-Hungarian Manual, 1913.

CONTRIBUTIONS, HOW COLLECTED BY OCCUPANT—RECEIPTS.

No contribution shall be collected except under a written order, and on the responsibility of a commander-in-chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributors.[1]—*Article 51, Regulations, Hague Convention IV, 1907.*

[For the statements concerning Article 51, Hague Convention, II, 1899, contained in "Reports to the Hague Conferences," see the discussion above, under Article 49, Hague Convention IV, 1907.]

The occupant cannot collect extraordinary contributions of money, save as an equivalent for fines, or imposts not paid, or for payments not made in kind.

Contributions in money can be imposed only on the order and responsibility of the general-in-chief, or of the superior civil authority established in the occupied territory, as far as possible, in accordance with the rules of assessment and incidence of the taxes in force.

Institute, 1880, p. 37.

Contributions can be levied only by the commander in chief, or by the general of a corps acting independently.

Hall, p. 444.

Hostages.

Hostages are sometimes seized to secure the payment or render of contributions and requisitions; and when the amount demanded is not provided by the time fixed, the invader takes such measures as may be necessary to enforce compliance at the moment or to guard by intimidation against future disobedience.

Hall, p. 444.

Receipts.

Receipts or 'bons de réquisition' are given in acknowledgement of the sums or quantities exacted in order that other commanders may not make fresh impositions without knowing the extent of those already levied, and to facilitate the recovery by the inhabitants from their own government of the amounts paid, if the latter determines on the conclusion of peace to spread the loss suffered over the nation as a whole.

Hall, pp. 444, 445.

Liability incurred by "receipt."

The "receipt" mentioned in this article is intended as evidence that money, goods, or services have been exacted, but implies, in

[1] This article is substantially identical with Article 51, Regulations, Hague Convention II, 1899.

itself, no promise to pay on the part of the occupant. He does not even thereby bind his Government, if victorious, to stipulate in the Treaty of Peace that the receipts shall be honored by the Government of the territory which has been under occupation. A Swiss proposal, making it obligatory to honour the receipts mentioned in this and the following article, was indeed deliberately rejected at the first Hague Conference.

An occupant may, of course, incur a greater liability by the form which he chooses to give to his receipts, or under the terms of a general proclamation which he has issued.

Holland, p. 55.

Contribution is a payment in ready money demanded either from municipalities or from inhabitants, whether enemy subjects or foreign residents. Whereas formerly no general rules concerning contributions existed, articles 49 and 51 of the Hague Regulations now enact that contributions may not be demanded extortionately, but exclusively for the needs of the army, in order, for instance, to pay for requisitions or for the administration of the locality in question. They may be imposed by a written order of a commander-in-chief only, in contradistinction to requisitions which may be imposed by a mere commander in a locality. They may not be imposed indiscriminately on the inhabitants, but must so far as possible be assessed upon such inhabitants in compliance with the rules in force of the respective enemy Government regarding the assessment of taxes. And, finally, for every individual contribution a receipt must be given. It is apparent that these rules of the Hague Regulations try to exclude all arbitrariness and despotism on the part of an invading enemy with regard to contributions, and that they try to secure to the individual contributors as well as to contributing municipalities the possibility of being indemnified afterwards by their own Government, thus shifting, so far as possible, the burden of supporting the war from private individuals and municipalities to the State proper.

Oppenheim, vol. 2, p. 186.

It will be remembered that the ordinary taxes are paid into the treasury of the invader, who is bound to use them for administrative purposes to the same extent as the dispossessed government. Unless, therefore, the yield from the usual sources of revenue is extraordinarily small, there will be no need of contributions for the everyday work of keeping order and doing justice between man and man. But the permission to take them for the needs of the army of occupation opens out a wide possibility of exaction. It is quite true that a contribution in money may sometimes be less irksome than a render in kind, and may indeed go further if the sum made over is spent in an advantageous purchase of supplies; but it is also true that a whole province may be impoverished by pecuniary demands that come within the letter of the Hague Regulations. Suppose, for instance, that a poor but warlike state invaded a neighbor and gained initial successes. It might maintain its forces and keep up their military equipment for a long time by constantly levying contributions "applied to the needs of the army." Thus the Napoleonic principle of making the war support itself might be carried out with

rigor, while the letter of the rules formulated at the Conferences of 1899 and 1907 was strictly observed. In this particular matter the Regulations protect inhabitants of occupied districts against pecuniary exactions levied merely for the enrichment of states or individuals; and doubtless this is a great gain. But, literally interpreted, they do not prevent a country from charging the largest share of the expenses of its war on the unfortunate inhabitants of districts overrun by its armies. In levying contributions, whatever may be the object in view, the assessment in use for the purpose of ordinary taxation is to be followed as far as possible, and receipts are to be given to the contributories. But there are no provisions for repaying them and they cannot expect anything of the kind, unless their own government, by way of equalizing burdens, gives them compensation after the war from the general taxation of the whole country, as France did in 1871 to those who had borne the brunt of the German exactions.

Lawrence, pp. 445, 446.

B XLI allowed contributions to be levied also by the civil authority established by the occupant.

Westlake, vol. 2, p. 107.

Contributions (payments in money) can only be exacted by virtue of an order from the commander in chief of the army. The troops are required to give receipts for such payments.

Art. 17, Russian Instructions, 1904.

A contribution may not be collected except under a written order and on the responsibility of a commander-in-chief. The collection must be made as far as is possible on the basis of the assessment of taxes in force at the time, and a receipt must be given to every individual contributor.

Edmonds and Oppenheim, art. 425.

The contribution shall be levied on the communes or local groupings, and not on individuals.

Jacomet, p. 80.

In regard to the raising of war levies it should be noted that they should only be decreed by superior officers and only raised with the cooperation of the local authorities. Obviously an acknowledgment of every sum raised is to be furnished.

German War Book, p. 179.

Article 51, Annex to Hague Convention IV, 1907, is substantially identical with section 200, Austro-Hungarian Manual, 1913.

Dooley v. United States, 182 U. S. 222, 230.

"Upon the occupation of the country [Porto Rico] by the military forces of the United States, the authority of the Spanish Government was superseded, but the necessity for a revenue did not cease. The government must be carried on, and there was no one left to administer its functions but the military forces of the United States. Money is requisite for that purpose, and money could only be raised by order of the military commander. The most natural method was by the continuation of existing duties. In adopting this method, General Miles was fully justified by the laws of war."

REQUISITIONS, PURPOSES FOR WHICH OCCUPANT MAY DEMAND—LIMITATIONS UPON AMOUNT AND NATURE—PAYMENT—RECEIPTS.

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.[1]—*Article 52, Regulations, Hague Convention IV, 1907.*

Article 52, Russian Amendment.

During the fourth meeting of the subcommission, his excellency Mr. Tcharykow proposed to complete Article 52 by a provision that commanders of military forces, when in occupied territory, should be authorized to provide, as soon as possible during the continuance of hostilities, for the redemption of receipts given for contributions in kind called for by the needs of the army of occupation.

This new proposal was sent to the committee, where it was recognized as being within the spirit of Article 52. After a short discussion with a view to avoid the term 'redemption,' agreement was reached on the following text to become the last paragraph of Article 52:

Contributions in kind shall, as far as possible, be paid for in cash; if not, a receipt shall be given, *and payment shall be arranged as soon as possible.*

The commission adopted this wording, and submits it to the Conference.

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," p. 526.

[For the statements concerning Article 52, Hague Convention II, 1899, contained in "Reports to the Hague Conferences," see the discussion above, under Article 49, Hague Convention IV, 1907.]

But if anything is necessary to be taken from them [certain inhabitants of an occupied territory] for the use of such armed force [of occupation], the same shall be paid for at a reasonable price.

Treaty of Amity and Commerce, between the United States and Prussia, concluded July 11, 1799, Article XXIII.

[1] This article, except for the addition of the last fourteen words, is substantially identical with Article 52, Hague Convention II, 1899.

Impositions in kind (requisitions) demanded from communes or inhabitants, should be in proportion to the necessities of war as generally recognized, and in proportion to the resources of the country.

Requisitions can only be made on the authority of the commander in the locality occupied.

Institute, 1880, p. 37.

In the *second* place we have a right to make the enemy's country contribute to the expenses of the war. Troops, in the enemy's country, may be subsisted either by regular magazines, by forced requisitions, or by authorized pillage. It is not always politic, or even possible, to provide regular magazines for the entire supplies of an army during the active operations of a campaign. Where this cannot be done, the general is obliged either to resort to military requisitions, or to entrust their subsistence to the troops themselves. The inevitable consequences of the latter system are universal pillage, and a total relaxation of discipline; the loss of private property, and the violation of individual rights, are usually followed by the massacre of straggling parties, and the ordinary peaceful and non-combatant inhabitants are converted into bitter and implacable enemies. The system is, therefore, regarded as both impolitic and unjust, and is coming into general disuse among the most civilized nations—at least for the support of the main army. In case of small detachments, where great rapidity of motion is requisite, it sometimes becomes necessary for the troops to procure their subsistence wherever they can. In such a case, the seizure of private property becomes a necessary consequence of the military operations, and is, therefore, unavoidable. Other cases of similar character might be mentioned. But even in most of these special and extreme cases provisions might be made for subsequently compensating the owners for the loss of their property.

Halleck, p. 458.

Contra as to payment.

[The occupying army] may take to its own use whatever its military necessities require, as live stock, provisions, clothing, etc. Whether it shall make compensation or not, for movables of that description so taken, is matter of State or belligerent policy solely.

Dana's Wheaton, note 169, p. 439.

The property, movable as well as immovable, of private persons in an invaded country, is to remain uninjured. If the wants of the hostile army require, it may be taken by authorized persons at a fair value.

Woolsey, p. 219.

Contra as to payment.

Requisitions are forced supplies of food, fodder, horses, wagons, lodging, material, labor, railroad rolling-stock, and so on, under the plea of military necessity. They are made under the authority of the commander of any detached force. Receipts are given for the property taken, but such receipts do not seem necessarily to involve payment for the said property; this is often made by the requisi-

tioning force, or payment arranged for by the terms of peace, or assumed by the government of the owner. This is a question of policy. Requisitions were made in many cases during the Franco-German war of 1870. Now if the true principle is that war is a public contest, waged between the powers or authorities of two countries, the passive individual ought not to suffer more than the necessities of war require. Vattel says, "that a general who would not sully his reputation, is to moderate his contributions. An excess in this point is not without the reproach of cruelty and inhumanity." But many generals will go to the extreme of what they think can be exacted, without regard to their reputation; and cruelty and inhumanity are as unavoidable in such transactions, as they would be if sheriffs and their men were to levy on goods by force of arms, and pay themselves out of the things seized. Moreover, requisitions are demoralizing, and defeat their own ends. They foster the lust of conquest, they arouse the avarice of officers, they leave a sting in the memories of oppressed nations; who, when iniquity is full, league together to destroy the great plunderers of mankind. The only true and humane principle is that already laid down, that war is waged by state against state, by soldier against soldier. The state resists an effort to obtain justice; the soldier obstructs the way of the armed officer of justice, and must be resisted.

Woolsey, pp. 220, 221; Vattel, iii, 9, sec. 165.

[For the discussion in Hall as to the exercise of the right to levy contributions and requisitions, see citation under the heading of Article 49, Hague Convention, IV, 1907].

Hostages.

Hostages are often seized in order to ensure prompt payment of contributions and compliance with requisitions, or as a collateral security, when a vessel is released on a ransom bill; more rarely they are used to guard against molestation in a retreat and for other like purposes. Under a usage which has long become obligatory it is forbidden to take their lives, except during an attempt at escape and they must be treated in all respects as prisoners of war, except that escape may be guarded against by closer confinement.

Hall, pp. 432, 433.

Requisitions consist in the render of articles needed by the army for consumption or temporary use, such as food for men and animals, and clothes, wagons, horses, railway material, boats, and other means of transport, and of the compulsory labor, whether gratuitous or otherwise, of workmen to make roads, to drive carts, and for other such services. The amount both of contributions and requisitions is fixed at the will of the invader; the commander of any detached body of troops being authorized under the usual practice to requisition objects of immediate use, such as food and transport, while superior officers are alone permitted to make demands for clothing and other articles for effecting the supply of which some time is necessary.

Hall, pp. 443, 444.

Hostages.

Hostages are sometimes seized to secure the payment or render of contributions and requisitions; and when the amount demanded is not provided by the time fixed, the invader takes such measures as may be necessary to enforce compliance at the moment or to guard by intimidation against future disobedience.

Hall, p. 444.

Receipts.

Receipts or 'bons de requisition' are given in acknowledgment of the sums or quantities exacted in order that other commanders may not make fresh impositions without knowing the extent of those already levied, and to facilitate the recovery by the inhabitants from their own government of the amounts paid, if the latter determines on the conclusion of peace to spread the loss suffered over the nation as a whole.

Hall, pp. 444, 445.

Foraging.

Foraging consists in the collection by troops themselves of forage for horses, and of grain, vegetables, or animals as provision for men, from the fields or other places where the materials may be found. This practice is resorted to when from want of time it would be inconvenient to proceed by way of requisition. With it may be classed the cutting of wood for fuel or military use.

Hall, p. 453.

Under the same general right he [the invader] may apply the resources of the country to his own objects. He may compel the inhabitants to supply him with food, he may demand the use of their horses, carts, boats, rolling stock on railways, and other means of transport, he may oblige them to give their personal services in matters which do not involve military action against their sovereign. But the right to take a thing does not necessarily involve the right to take it without payment, and the right of an invader is a bare one; so long therefore, as he confines himself within the limits defined by his right of control he can merely compel the render of things or services on payment in cash or by an acknowledgment of indebtedness which he is himself bound to honor. If he either makes no such payment or gives receipts, the value represented by which he leaves to the sovereign of the occupied territory to pay at the end of the war, he oversteps these limits, and seizes private property under his general right of appropraition.

Hall, pp. 497, 498.

"Requisitions in kind" may, of course, relate not only to provisions, but also to horses, vehicles, clothing, tobacco, &c. The "services" here intended are such as would be rendered by drivers, blacksmiths, and artisans and labourers of all kinds; as also by the occupiers of houses upon which troops are quartered.

The phrase "for the needs of the army of occupation" was adopted rather than "for the necessities of the war," as being more favourable to the inhabitants.

The rules as to assessment, mentioned in Arts. 108, 111, *supra*, are obviously inapplicable to "requisitions" and "services," which can therefore be limited only by "the resources of the country."

The "operations of war" here intended would probably not comprise works at a distance from the scene of hostilities. Cf. Art. 77, *supra*.

"Requisitions" and "services" must obviously often be necessary when there is no time for reference to a higher authority than the Commander on the spot, or even for obtaining his order in writing.

Payment for supplies is even politic, as decreasing the chances of their being concealed. The provision that the receipts here mentioned shall be honoured by the belligerent on whose behalf they are signed was not contained in Art. 52 of the H. R. 1899.

Holland, p. 56.

Payment.

The last Hague Conference, in making the requisitioning belligerent responsible for payment, has struck a blow at the right of requisitioning—the extreme right recognised by the jurists—which may change its whole nature, and complete a process which had already begun, of replacing requisitioning by the system of amicable purchase or at least by a right of preemption.

Spaight, p. 384.

"Military necessities," says the Report of the Committee of the first Hague Conference, "are opposed to demanding for ordinary daily requisitions a higher authority than that of the officer on the spot, and, as to a written order that would be superfluous in view of the necessity for giving a receipt."

Spaight, p. 402; Hague I B. B., p. 150.

"Services" and articles which may be requisitioned.

As regards the "services" which may be requisitioned, General de Voigts-Rhetz explained them at the Brussels Conference as including "services performed by drivers, farriers, smiths, carpenters, and, generally speaking, by all workmen of whatever trade they belong to." He pointed out, however, that the services demanded must not be such as to oblige the inhabitants to take part in warlike operations. At the same Conference, the Swiss delegate drew attention to the hardships which would result from allowing an invader to seize the small boats of the inhabitants where, as in Switzerland, they form the sole means of communication between localities. The Committee of Conference, to satisfy him, inserted the following rather harmless *voeu* in the Protocol: "In cases where boats are the sole necessary and indispensable means of communication, the opinion of the Committee is that the occupier should have regard to the exigencies of the ordinary mode of living (*la vie publique*)." As the German military delegate observed, an occupant has as much right to requisition boats as the carts of kitchen gardeners or contractors. The case which the Swiss delegate raised is one of many in which the requisitioning of boats, vehicles, or property may result in peaceable citizens being deprived of their only means of living; yet in such a case the invader's military exigencies make the requisitioning imperatively necessary. Not only may he need the boats, etc., for

his own purposes, but it may be a matter of vital importance not to leave them for the enemy to use.

Spaight, p. 403; Brussels B. B., pp. 274, 246.

Requisitions must be limited to "the needs of the army of occupation," not necessarily to the needs of the troops on the spot. Therefore, there is nothing necessarily illegitimate in the French official regulation which empowers a commander to requisition rations for more than his actual numbers, in order to mislead the enemy as to his strength. The Germans appear to have employed a ruse of this kind in 1870–1.

Spaight, p. 405; *Bulletin Officiel, Service des Armees en Campagne*, p. 86.

Time and mode of payment.

M. Tcharkyow (Russia) proposed to complete this Article by a provision that commanders should be authorized to settle as soon as possible *during* the continuance of hostilities the receipts given for requisition. The wording of the addition was settled by the *Comité de rédaction*, leaving the time and mode of payment indefinite (*le plus tôt possible*).

Higgins, p. 270.

Contra as to payment.

Requisitions and contributions in war are the outcome of the eternal principle that war must support war. This means that every belligerent may make his enemy pay as far as possible for the continuation of the war. But this principle, though it is as old as war and will only die with war itself, has not the same effect in modern times on the actions of belligerents as it formerly had. For thousands of years belligerents used to appropriate all private and public enemy property they could obtain, and, when modern International Law grew up, this practice found legal sanction. But after the end of the seventeenth century this practice grew milder under the influence of the experience that the provisioning of armies in enemy territory became more or less impossible when the inhabitants were treated according to the old principle. Although belligerents retained in strict law the right to appropriate all private besides all public property, it became usual to abstain from enforcing such right, and in lieu thereof to impose contributions of cash and requisitions in kind upon the inhabitants of the invaded country. And when this usage developed, no belligerent ever thought of paying in cash for requisitions, or giving a receipt for them. But in the nineteenth century another practice became usual. Commanders then often gave a receipt for contributions and requisitions, in order to avoid abuse and to prevent further demands for fresh contributions and requisitions by succeeding commanders without knowledge of the former impositions. And there are instances of cases during the nineteenth century on record in which belligerents actually paid in cash for all requisitions they made. The usual practice at the end of the nineteenth century was that commanders always gave a receipt for contributions, and that they either paid in cash for requisitions or acknowledged them by receipt, so that the respective inhabitants could be indemnified by their own Government after conclusion of peace. However, no restriction whatever was imposed upon com-

manders with regard to the amount of contributions and requisitions, and with regard to the proportion between the resources of a country and the burden imposed. The Hague Regulations have now settled the matter of contributions and requisitions in a progressive way by enacting rules which put the whole matter on a new basis. That war must support war remains a principle under these regulations also. But they are widely influenced by the demand that the enemy State as such, and not the private enemy individuals, should be made to support the war, and that only so far as the necessities of war demand it should contributions and requisitions be imposed. Although certain public moveable property and the produce of public immoveables may be appropriated as heretofore, requisitions must be paid for in cash or, if this is impossible, acknowledged by receipt.

Oppenheim, vol. 2, pp. 183–185.

Quartering of troops.

The principle that requisitions must be paid for by the enemy is thereby absolutely recognised, but, of course, commanders-in-chief may levy contributions in case they do not possess cash for the payment of requisitions. However this may be, by the rule that requisitions must always be paid for, it again becomes apparent and beyond all doubt that henceforth private enemy property is as a rule exempt from appropriation by an invading army.

A special kind of requisition is the quartering of soldiers in the houses of private inhabitants of enemy territory, by which each inhabitant is required to supply lodging and food for a certain number of soldiers, and sometimes also stabling and forage for horses. Although the Hague Regulations do not specially mention quartering, article 52 is nevertheless to be applied to it, since quartering is nothing else than a special kind of requisition. If cash cannot be paid at once for quartering, every inhabitant concerned must get a receipt for it, stating the number of soldiers quartered and the number of days they were catered for, and the payment of the amount must be made as soon as possible.

But it must be specially observed, that neither in the case of ordinary requisitions nor in the case of quartering of troops is a commander compelled to pay the prices asked by the inhabitants concerned. On the contrary, he may fix the prices himself, although it is expected that the prices paid shall be fair.

Oppenheim, vol. 2, p. 185.

Requisition is the name for the demand for the supply of all kinds of articles necessary for an army, such as provisions for men and horses, clothing, or means of transport. Requisition of certain services may also be made, but they will be treated below in § 170 together with occupation, requisitions in kind only being within the scope of this section. Now, what articles may be demanded by an army cannot once for all be laid down, as they depend upon the actual need of an army. According to article 52 of the Hague Regulations, requisitions may be made from municipalities as well as from inhabitants, but they may be made so far only as they are really necessary for the army. They may not be made by individual soldiers or officers, but only by the commander in the locality. All requisitions must be paid for in cash, and if this is impossible, they must be

acknowledged by receipt, and the payment of the amount must be made as soon as possible.

Oppenheim, vol. 2, p. 185.

"Services" which may be required.

Though the inhabitants of invaded districts are to be free from compulsion to take any part in the operations of war against their own country, they may be forced to render services for the needs of the army of invasion. The line between the two may sometimes be very thin; and no doubt controversy will arise over doubtful cases. But the underlying principle is clear. To drive a herd of bullocks into a slaughter pen is a very different thing from driving an ammunition wagon into a field of conflict. To share house and home with a few soldiers of the enemy is far less obnoxious to patriotic feeling than to be compelled with a revolver at one's head to lead a hostile division over a mountain path to the flank of the defending army.

Lawrence, pp. 418, 419.

Strictly speaking, *requisitions* are articles of daily consumption and use taken by an invading army from the people of the occupied territory; *contributions* are sums of money exacted over and above the taxes, and *fines* are payments levied upon a district as a punishment for some offence against the invaders committed within it. But the two former terms are used interchangeably in a loose and popular sense to signify anything, whether in money or in kind, demanded by an occupying force from the inhabitants of the country it has overrun.

Lawrence, p. 443.

The invader has an undoubted right to levy requisitions at his own discretion, and in most modern wars he has done so, sometimes leniently, sometimes severely. * * * The demand should be made in writing, and receipts are to be given for the articles supplied. This is desirable in every case, as evidence of what has been taken. It is made obligatory when the supplies are not paid for in ready money. Such payment is recommended, but obviously the recommendation cannot be carried out always and everywhere. No commander would let his soldiers starve in the midst of plenty merely because his military chest had been exhausted for the moment, or had not kept up with his march. But in order to secure that the inhabitants should eventually receive remuneration, the Hague Conference of 1907 added to the clause that directed receipts to be given, if cash was not forthcoming, another to the effect that the payment of the amount due should be made as soon as possible. It did not however, say from whom the payment was to come. The natural source is the side that received the supplies; but if it happens to be victorious, it may, as one of the conditions of peace, force its beaten adversary to provide the funds. Or it may find those whom it has beaten in the field so impoverished that it has to choose between leaving the country absolutely ruined or paying for the requisitions of both sides. Great Britain was confronted by these alternatives at the close of the Boer War in 1902, and she chose the latter. By the tenth article of the Peace of Vereeniging "all receipts given by officers in the field of the late Republics or under their orders," if

found "to have been duly issued in return for valuable consideration," were to be received as evidence of the war losses, for the making good of which a sum of three millions sterling was granted.

Lawrence, pp. 443, 444; *London Times*, June 3, 1902.

Japanese system.

In modern wars civilized armies carry with them vast trains of provisions and other supplies, and regard requisitions as a supplementary resource. But in the turmoil and confusion of the struggle, it often happens that the best organized services fail on special occasions, such as a forced march or an unexpected engagement, to satisfy the needs of the troops, and then what is wanted must be taken from the surrounding country. The collection is generally made through the local authorities, and only when they have fled, or when there is not time to set them in motion, are soldiers detailed to bring in what is required. In Manchuria during the war of 1904–1905 the Japanese applied a new method which reflects equal credit on their humanity and their ingenuity. In return for materials and services they gave military cheques, which could be exchanged for silver coin at stated times and places. They offered the standard prices of the district, as settled between their authorities and the Chinese Chambers of Commerce. These were placarded in the towns and villages, and it was announced that whatever was requisitioned would be paid for at the rates in question. The result was that after a time the people used the cheques as paper money, and asked for no coin in exchange for them. The plan, or some modification of it, might be generally adopted with great advantage. Most armies fix their own prices, which they do not put too high. Great Britain and the United States pay market rates, but as a rule leave them to be determined on the spur of the moment. The Japanese system avoids either extreme, and, in addition, solves the difficulty caused by the occasional absence of ready money.

Lawrence, pp. 444, 445; Takahashi, International Law applied to the Russo-Japanese War, pp. 260, 261.

The money, things and services which invaders take from the inhabitants of the enemy territory are now classified as contributions when they are money, requisitions when they are things or services, though formerly that distinction of terms was not strictly observed. Contributions have been dealt with in the articles H XLVIII to H LI, and the code now proceeds to deal with requisitions. Since military necessities (H XLIX) or, which is the same thing, the necessities of the army of occupation (H LII), are referred to in giving the measure of both, there is a connection between them, and as we have reached a point at which both have been brought before us some general observations may now be made on the connected matters. The first such observation is that the character of the laws of war, as being always restrictive and never giving a positive sanction to violence, is plainly indicated in the articles in question. No right to levy contributions or make requisitions is declared, but H XLVIII and H XLIX are hypothetical on the payment of the money being imposed, and H L, H LI and H LII are expressly provisions of restraint.

If we ask what at different times it has not been prohibited to take from the inhabitants of the enemy territory, the answer for the oldest time is that nothing was prohibited to be taken from them. Neither in antiquity nor under the doctrine of *courir sus* had the inhabitants of the enemy territory any rights against the invader. He took without scruple whatever the pillage by his troops had left, so far as he desired to take it. But when the view prevailed that occupation was conquest, as soon as his inroad became an occupation he was placed in a new relation to the inhabitants of the occupied territory. They would no longer be properly regarded as his enemies but as his subjects, and the worst government that ever existed with the pretension of being civilized never dreamed of leaving the property, money and persons of its subjects, not chargeable with active opposition to it, to the arbitrary will of its military commanders. The question then for the invading sovereign should have been how much of the burden of the war, as between his old subjects and his new, he could justly throw on the latter. But there is no trace that that question was ever put. With a thoughtless want of logic the burden of war which it was customary for the people of occupied districts to bear as enemies was still imposed on them as subjects; they only acquired a better title than the occupant's mercy to keep what was left to them after all requisitions and contributions were satisfied. Afterwards military occupation came to be distinguished from conquest, and about the same time Rousseau proclaimed that war is a relation of state to state, in which citizens who are neither soldiers nor defenders of their country are not implicated. But again the passive citizen was not allowed to profit by the new doctrine, though this time there was not a thoughtless want of logic. The requisitions and contributions were still exacted from him though he was neither a soldier nor a defender of his country, and pens were, and are still, employed to reconcile his fate with the proclamation of Rousseau. Lastly there has come the modern doctrine that between the passive citizen and the enemy state war introduces a relation by virtue of which the former may be made to suffer what for the purpose of the war it is "necessary" or "natural" for the latter to inflict. Combine with this the fact that most nations do not consider themselves rich enough to conduct a campaign on enemy's territory without availing themselves of the resources of that territory, and the exaction of requisitions and contributions is justified in the measure in which the invader's own resources are deemed by him to be insufficient. In sum, requisitions and contributions have continued to be exacted, by force of tradition and circumstance, through a series of successive theoretical views none of which has been capable of fixing a limit to them.

When the Duke of Wellington carried the Peninsular War from Spain into France his army paid for what it took, and found its reward in the abundance of supplies offered to it. But this was a procedure of which history furnishes few examples. The Prussians paid their way in the kingdom of Saxony in 1866, it being their desire to preserve the friendship of the Saxon population as a portion of the intended North German confederation. And in 1871 Germany repaid, out of the war indemnity received from France, the exactions which she had imposed on the territory ceded to her. But it results from the historical sketch which we have given that

no obligation on the part of an invader to pay the amounts represented by the receipts which he gives for requisitions and contributions is acknowledged by public opinion and practice, that is, by what is called public law. It is sometimes suggested—for it can scarcely be put more strongly—that, if the invader does not pay those amounts, an ultimate liability for them rests on the territorial government. But since that government does not regard itself as having provoked the war by wrongful conduct, it will not acknowledge itself to be more responsible for the calamities which its subjects have suffered by the invasion than for those which they may suffer from tempest or earthquake, and it has not been usual for it to assume such responsibility. It was a novel instance of generosity when, in 1871, the French legislature, expressly repudiating liability, voted a large sum of money, but not equal to the amount of the German exactions, for the relief of those who had suffered from them. In short, as between the invading government and the individuals from whom it takes requisitions and contributions, all question about them is concluded by the taking them; as between the invading and the territorial governments, the latter as representing the grievances of its subjects, it is concluded by the peace: and as between the mass of the nation represented by the territorial government and the suffering individuals, no juridical question arises, there arises only the political claim that losses incurred for a cause in which the whole people were embarked together should be borne with some approach to equality. In these circumstances the Hague laws of war adopt a line which does not commit them to any conclusion. By saying that requisitions should be paid for in ready money as far as possible, they must mean that this shall be done by the invading army, since it is with its conduct that the whole of Section III is concerned: but they leave it open to the invading government to plead that it is not rich enough to invade a neighbour at its own cost. And so far as the requisitions are not paid for in ready money, it is not demanded that the receipts to be given shall express a liability, but only that they shall record the fact of the requisitions having been furnished—*les prestations en nature seront constatées par des reçus*—leaving the person who gets the record to make such use of it as he can.

Coming now to the limits which the best modern opinion seeks to place on the exactions of an invader, we observe that H LII restricts requisitions to "the necessities of the army of occupation," which in conformity with present understanding are described by Hall as consisting "of articles needed by the army for consumption or temporary use, such as food for men and animals and clothes, wagons, horses, railway material, boats and other means of transport, and of the compulsory labour, whether gratuitous or otherwise, of workmen to make roads, to drive carts, and for such other services." The German general staff describes digging ditches, and work on streets, bridges, railways and buildings as lawful objects of compulsory labour. Indeed, even in times when the civil population was treated with less humanity than now, the practical difficulty of carrying articles requisitioned in kind out of the country generally limited demands of that class to the consumption or immediate use of the army. The restriction which places modern opinion in the

sharpest contrast to what was common as late as the early part of the nineteenth century is that by which H XLIX, as we have seen, limits contributions, so far as not expended on the administration of the occupied territory, to an equivalent for requisitions. Where the things or services which an army wants in kind for its use are to be found or obtained in the territory, it may be better both for itself and for the population that it shall levy the amount of their price and buy them or pay for them than that it should take them without payment from their owners or from those who can render them. The burden is then more equally distributed, and the things and services themselves may be more easily obtained in the requisite quantities. It was not intended by H XLIX to permit the levy of money to be spent in the invader's own country in supplying the necessities of his army. The provision made at home must be borne by him out of his general resources, except so far as he may be able to recover its cost from the enemy as a war indemnity at the peace. The exactions which he makes as an occupant are not to be the means, as they were often made to be, of increasing his general ability to carry on the war. The line thus drawn, it is true, is not to be deduced from the principle that the passive citizen may be made to suffer only what it is "necessary" or "natural" for the enemy of his state to do in order to break down the resistance of his state, even when it is guarded by the qualification, necessary or natural in the course of military operations. But it is a practical alleviation of the application of that principle, and it can only be made a tangible line by insisting, first, on the limitation of requisitions to the consumption or immediate use of the occupying army, and secondly, on a limitation of contributions which makes them a substitute for requisitions so limited.

H LII further lays down that requisitions, and by consequence the contributions which may be substituted for them, even when imposed for the necessities of the army of occupation, shall not be in cruel disproportion to the resources of the district, and that no services shall be required which would amount to *taking part in* the operations of the war. The last clause is worded similarly to the second paragraph of H XXIII(h) (above, p. 79), and less strictly than that (H VI; above, p. 67) which provides that the tasks of prisoners shall *have nothing to do with* the operations of the war (*n'auront aucun rapport avec*). Work on roads, bridges and railways, which has very much to do with the military operations, is constantly requisitioned. Even service as a guide is allowed to be requisitioned by those who do not see or will not accept its falling under H XXIII(h), second paragraph, although that case is a particularly cruel one. But there must be a limit, and I suppose that to require an enemy civilian to assist in placing a gun in position would be recognised by all as forbidden by H LII.

Westlake, vol. 2, pp. 107–112.

Hostages.

Among or analogous to the services which may be requisitioned from the population of an occupied district is that of serving as hostages, "to ensure prompt payment of contributions or compliance with requisitions," "as a guarantee against insurrection," or "as a protection against special dangers which it is supposed can

not otherwise be met." In 1870 the Germans placed on the railway engines notable inhabitants of districts in which the lines had been frequently damaged, a proceeding which "was universally and justly reprobated on the ground that it violated the principle which denies to a belligerent any further power than that of keeping his hostage in confinement." And it may be also condemned as inflicting, if any harm happened to the hostage, an individual penalty for facts with which he was not individually connected. It would not be more unjust if civilians of the enemy state were placed in the front of battle in order to induce the enemy's troops to withhold their fire. Where the seizure of hostages is lawful, "under a usage which has long become obligatory it is forbidden to take their lives, except during an attempt to escape, and they must be treated in all respects as prisoners of war."

Westlake, vol. 2, pp. 112, 113; Hall, secs. 135, 156.

"The rules, therefore, which have been observed hitherto, in requiring, and taking, and giving receipts for supplies from the country, are to be continued in the villages on the French frontier; and the commissaries, attached to each of the armies of the several nations, will receive the orders from the commander in chief of the army of their nations, respecting the mode and period of paying for such supplies."

Order issued by the Duke of Wellington at Irurita, July 9, 1813, Gurwood's Dispatches of the Duke of Wellington, XI, 168, 169.

October 26, 1846, General Taylor, acknowledging the receipt of instructions of Mr. Marcy, Secretary of War, of September 22, 1846, stated that it had been impossible up to that time to sustain the army to any extent by forced contributions of money or supplies. The country between the Rio Grande and the Sierra Madre was poor, furnishing only corn and beef. These articles had been obtained by paying for them at moderate rates, but, if a different system had been adopted, it was certain that they could not have been procured in sufficient quantities.

Moore's Digest, vol. 7, p. 282.

Contra as to payment.

Mr. Marcy, Secretary of War, April 3, 1847, addressed to General Scott the following instructions:

"As the Mexicans persist in protracting the war, it is expected that, in the further prosecution of it, you will exercise all the acknowledged rights of a belligerent, for the purpose of shifting the burden of it from ourselves upon them. The views of the Government, in this respect, were presented to General Taylor in a despatch from this Department of the 22d September, 1846, a copy of which, so far as relates to this subject, is herewith sent to you, with the direction that these views may be carried out under a discretion similar to that given to him. The enemy should be made to realize that there are other inducements to make them desire peace besides the loss of battles, and the burden of their own military establishments. The right of an army, operating in an enemy's country, to seize supplies, to forage, and to occupy such buildings, private as well as public, as may be required for quarters, hospitals, storehouses, and

other military purposes, without compensation therefor, can not be questioned; and it is expected that you will not forego the exercise of this right to any extent compatible with the interest of the service in which you are engaged."

Referring to these instructions, General Scott, in a letter of April 28, 1847, dated at Jalapa, said that he had endeavored to reach that place, where he might obtain as many essential supplies as possible, such as clothing, ammunition, medicines, breadstuffs, beef, mutton, sugar, coffee, rice, beans, and forage. For these they must pay or they would be withheld, concealed, or destroyed by the owners, whose national antipathy to the Americans remained unabated. Again, on May 20, 1847, he wrote that, if it was expected at Washington that the army was to support itself by forced contributions levied upon the country, it might ruin and exasperate the inhabitants and starve itself. Not a ration for a man or horse would be brought in except by the bayonet, and this would oblige the troops to spread themselves out many leagues to the right and left in search of subsistence, and to stop all military operations. On Sept. 1, 1847, Mr. John Y. Mason, Acting Secretary of War, and on Oct. 6, 1847, Mr. Marcy wrote to General Scott urging a change of his policy in order that the burden of sustaining the American forces might, so far as possible, be shifted to the Mexican people. In both communications anxiety was betrayed by reason of the futility of the efforts that had made to bring the war to a close, and an apprehension that the Mexican authorities were encouraged to continue the conflict by that portion of the population which had not been made to feel its hardships.

Moore's Digest, vol. 7, pp. 284, 285.

Contra as to payment.

By General Order, No. 358, Nov. 25, 1847, General Scott gave notice that a change of system would be begun by stopping, as soon as the contracts would permit, all rents for houses or quarters occupied by officers or troops of the American Army in any city or village in Mexico. He directed that in future the necessary quarters, both for officers and troops, where the public buildings were insufficient, should first be demanded of the civil authorities of the several places occupied by the troops, so as to equalize the inconvenience imposed upon the inhabitants.

Moore's Digest, vol. 7, p. 285.

"Private property taken for the use of the army is to be paid for, when possible, in cash at a fair valuation, and when payment in cash is not possible receipts are to be given."

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain I, 159.

Requisitions (compulsory supplies) in kind or in services can only be imposed on the population upon the authorization of the commander in chief of the army or of the chief of the military administration of the district commanding *ad interim* the troops of the district, and, in case of urgency, upon the authorization of the corps or division commander.

The services should not be of such a nature as to oblige the local population to take part in the military operations against their country.

The supplies and services are to be paid for as far as possible in cash; otherwise the troops are expected to give receipts (signed and sealed by the chiefs of detachments and companies).

Articles 18, 19 and 20, Russian Instructions, 1904.

General right to requisition services.—Services of the inhabitants of occupied territory may be requisitioned for the needs of the Army. These will include the services of professional men and tradesmen, such as surgeons, carpenters, butchers, bakers, etc., employees of gas, electric light, and water works, and of other public utilities, and of sanitary boards in connection with their ordinary vocations. The officials and employees of railways, canals, river or coastwise steamship companies, telegraph, telephone, postal, and similar services, and drivers of transport, whether employed by the State or private companies, may be requisitioned to perform their professional duties so long as the duties required do not directly concern the operations of war against their own country.

U. S. Manual, p. 114.

Can restore general conditions.—The occupant can requisition labor to restore the general condition of the public works, of the country to that of peace; that is, to repair roads, bridges, railways, and as well to bury the dead and collect the wounded. In short, under the rules of obedience, they may be called upon to perform such work as may be necessary for the ordinary purposes of government, including police and sanitary work.

U. S. Manual, p. 114.

Can not be forced to construct forts, etc.—The prohibition against forcing the inhabitants to take part in the operations of war against their own country precludes requisitioning their services upon works directly promoting the ends of the war, such as construction of forts, fortifications, and entrenchments; but there is no objection to their being employed voluntarily, for pay, on this class of work, except the military reason of preventing information concerning such work from falling into the hands of the enemy.

U. S. Manual, p. 114.

What may be requisitioned.—Practically everything may be requisitioned under this article that is necessary for the maintenance of the Army and not of direct military use, such as fuel and food supplies, clothing, wine, tobacco, printing presses, type, etc., leather, cloth, etc. Billeting of troops for quarters and subsistence is also authorized.

U. S. Manual, p. 121.

Method of requisitioning.—Requisitions must be made under the authority of the commander in the locality. No prescribed method is fixed, but if practicable requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direct by detachments if local authorities fail for any reason. Billeting may be resorted to if deemed advisable.

U. S. Manual, p. 122.

The amount taken.—The expression "needs of the army" was adopted rather than "necessities of the war" as more favorable to the inhabitants, but the commander is not thereby limited to the absolute needs of the troops actually present. The object was to avoid reducing the population to starvation.

U. S. Manual, p. 122.

The occupant can claim certain services from the inhabitants and may impose upon them such restrictions as he judges necessary. He can, under certain conditions, use, requisition, seize and destroy their property, and they may in various other ways have to suffer under the effects of the war.

Edmonds and Oppenheim, art. 357.

It has already been stated that obedience to the occupant is one of the implied conditions of the special position accorded to the peaceful inhabitants. Practically they must give to his administration the same obedience, short of acknowledging his sovereignty, which they rendered to their own Government before the occupation. The claim to obedience is, however, limited by the three rules (i) that "a belligerent is forbidden to compel the subjects of the hostile party to take part in the operations of war directed against their own country even if they were in the service of the belligerent before the commencement of the war"; (ii) that the services demanded of inhabitants shall be "of such a nature as not to involve them in the obligation of taking part in military operations against their own country"; and (iii) that "a belligerent is forbidden to compel the inhabitants of territory occupied by him to furnish information about the army of the other belligerent, or about its means of defence."

Edmonds and Oppenheim, art. 382.

The personal service of the inhabitants may be requisitioned for the needs of the army. Thus professional men and tradesmen, such as surgeons, physicians, pharmacists, electricians, coach builders, smiths, carpenters, butchers, bakers, etc., employees of gas, electric light, and water works, and of sanitary boards may be called on to render service in connection with their ordinary vocations. The officials and employees of railways, canals, river steamship companies, telegraphs, telephones, postal and similar services, and drivers of transport, whether employed by the State or private companies, may similarly be requisitioned to perform their professional work, provided the services required do not directly concern the operations of war against their own country.

The occupant can requisition labour to restore the general condition of the country to that of peace, *e. g.*, to repair roads, bridges, railways and to bury the dead and collect wounded. Inhabitants owe obedience when called on to carry out measures for the ordinary purposes of government, and, as already stated to do police and similar work.

It is unusual and would be generally impolitic to requisition the services of inhabitants for the superintendence or organization of labour or work. Yet the authorities may be ordered to provide the number of labourers required for legitimate purposes.

The prohibition to compel inhabitants to take part in the operations of war against their own country excludes their being requisitioned

to construct entrenchments and fortifications, although nothing prevents their being offered payment to induce them to undetake such work voluntarily. It would, however, not be wise to use inhabitants indiscriminately for such purpose, since they might convey to the enemy information as to the nature of the works.

Services for legitimate purposes may, if necessary, be obtained by force, and the refusal to work may be met by punishment. As a rule, however, it will be more politic to offer good wages, because these frequently prove an irresistible attraction in time of war.

Edmonds and Oppenheim, arts, 388–392.

The second category of private personal property covers all such articles as are not susceptible of direct military use, but are necessary for the maintenance of the army. Under this category fall such things as: food and fuel supplies, liquor and tobacco, cloth for uniforms, leather for boots, and the like. The taking of such articles is forbidden unless they are actually required for the needs of the army. They must be duly requisitioned, and the amount taken must be in proportion to the resources of the country.

Edmonds and Oppenheim, art. 416.

Articles requisitioned should be paid for in ready money, but if this is not possible a receipt must be given for them, and the payment of the amount due must be made as soon as possible.

Edmonds and Oppenheim, art. 417.

Requisitions can only be demanded on the authority of the commander in the locality occupied, but it is not necessary that his order for the requisition should be produced, as the articles taken must be paid for or a receipt given.

Edmonds and Oppenheim, art. 418.

By requisitions is to be understood the compulsory appropriation of certain objects necessary for the army which is waging war. What things belong to this category is quite undetermined. They were primarily the means to feed man and beast, next to clothe and equip the members of the army, *i. e.*, to substitute clothing and equipment for that which has worn out or become insufficient in view of the altered circumstances and also to supplement it; furthermore, there will be such objects as serve for the transport of necessaries, and finally all objects may be demanded which serve to supply a temporary necessity, such as material and tools for the building of fortifications, bridges, railways and the like. That requisitions of this kind are unconditionally necessary and indispensable for the existence of the army, no one has yet denied; and whether one bases it legally upon necessity or merely upon the might of the stronger is a matter of indifference as far as the practise is concerned.

The right generally recognized by the law of nations of to-day to requisition is a child of the French Revolution and its wars. It is known that as late as in the year 1806, Prussian battalions camped close to big stacks of corn and bivouacked on potato fields without daring to appease their hunger with the property of the stranger; the behavior of the French soon taught them a better way. Every one knows the ruthless fashion in which the army of the French

Republic and of Napoleon satisfied their wants, but of late opinion laying stress upon the protection of private property has asserted itself. Since a prohibition of requisitions would, considering what war is, have no prospect of acceptance under the law of nations, the demand has been put forward that the objects supplied should at least be paid for. This idea has indeed up till now not become a principle of war, the right of requisitioning without payment exists as much as ever and will certainly be claimed in the future by the armies in the field, and also, considering the size of modern armies, must be claimed; but it has at least become the custom to requisition with as much forbearance as possible, and to furnish a receipt for what is taken, the discharge of which is then determined on the conclusion of peace.

In order to avoid overdoing it, as may easily happen in the case of requisitions, it is often arranged that requisitions may never be demanded by subordinates but only by the higher officers, and that the local civil authorities shall be employed for the purpose. It cannot, however, be denied that this is not always possible in war; that on the contrary the leader of a small detachment and in some circumstances even a man by himself may be under the necessity to requisition what is indispensable to him. Article 40 of the Declaration of Brussels requires that the requisitions (being written out) shall bear a direct relation to the capacity and resources of a country, and, indeed, the justification for this condition would be willingly recognized by every one in theory, but it will scarcely ever be observed in practise. In cases of necessity the needs of the army will alone decide, and a man does well generally to make himself familiar with the reflection that, in the changing and stormy course of a war, observance of the orderly conduct of peaceful times is, with the best will, impossible.

German War Book, p. 174.

Article 52, Annex to Hague Convention IV, 1907, is substantially identical with section 201, Austro-Hungarian Manual, 1913.

Private parties can not be charged for military works.

United States v. *Pacific Railroad, 120 U. S. 227, 239.*—The Court said:

"While the Government can not be charged for injuries to, or destruction of, private property caused by military operations of armies in the field, or measures taken for their safety and efficiency, the converse of the doctrine is equally true, that private parties can not be charged for works constructed on their lands by the Government to further the operations of its armies. Military necessity will justify the destruction of property, but will not compel private parties to erect on their own lands works needed by the Government, or to pay for such works when erected by the Government. The cost of building and repairing roads and bridges to facilitate the movements of troops, or the transportation of supplies and munitions of war, must, therefore, be borne by the Government."

OCCUPANT LIMITED TO SEIZING PROPERTY OF THE STATE—EXCEPTIONS.

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depôts of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depôts of arms, and, generally, all kinds of munitions of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.—*Article 53, Regulations, Hague Convention IV, 1907.*

Article 53, Austro-Hungarian Amendment and Russian Subamendment.

The delegation of Austria-Hungary proposed to complete the provisions of Article 53 relative to the seizure of means of transportation and communication by adding the words 'on land, at sea, and in the air.'

The wording proposed was as follows:

Railway plant, telegraphs, steamers and other ships, vehicles of all kinds, in a word all means of communication operated on land, at sea and in the air for the transmission of persons, things, and news, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored and compensation fixed when peace is made.

The delegation of Russia asked, besides, to add to the enumeration in this text the words 'as well as teams, saddle animals, draft and pack animals' after the words 'vehicles of all kinds.' This addition was suggested as being analogous with Articles 14 and 17 of the new Geneva Convention of 1906, which mentions teams at the same time as vehicles. The delegation of Austria-Hungary accepted this amendment.

While fully appreciating the need of defining as precisely as possible the scope of the text, the committee thought that such a nomenclature might cause inconvenience, as any enumeration is unsafe because incomplete. It was believed preferable to adopt a general formula not lending itself to any ambiguity and thus worded: 'All means of communication and of transport.' The military delegate of Russia himself agreed with this way of looking at the matter, on condition that the text as proposed could not have a restricted mean-

ing, and it was approved unanimously. The second paragraph of Article 53 would commence then with the words:

All means of communication and of transport operated on land, at sea, and in the air, etc.

At this point the military delegate of Japan referred to the reservations which had been stated by his delegation in the subcommission concerning the addition of the words 'at sea,' as such a provision appeared to him to trench upon the programme of the Fourth Commission. However, the committee considered it advisable to retain them, as the right of maritime capture is applicable in land warfare in the case of ships seized in a port by a body of troops, especially as regards those destined for river navigation.

The amendment relating to Article 53 led the senior delegate of Switzerland to inquire whether its provisions can be taken to apply to the property of neutral persons domiciled in belligerent territory.

The committee was of the opinion that this question was included in the programme of the second subcommission; it was already occupied with a German proposal regarding the treatment of neutral persons, and the first subcommission had sent to it all the matters relative to neutrals comprised in the fourth section of the Regulations (Articles 57 to 60), as not being properly placed in instructions intended for troops.

The text adopted by the Commission and submitted to the Conference is therefore worded as above.

Report to Hague Conference, 1907, from the Second Commission, "Reports to the Hague Conferences," pp. 526, 527.

An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, telephones, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of munitions of war, even though belonging to companies or to private persons, are likewise material which may serve for military operations, but they must be restored at the conclusion of peace, and indemnities paid for them.

Art. 53, Regulations, Hague Convention II, 1899.

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

Railway plant, land telegraphs, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even if belonging to companies or to private persons, are likewise material which may serve for military operations and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, as well as steamers and other ships above mentioned shall be restored and compensation fixed when peace is made.

Art. 6, Declaration of Brussels.

The occupant can only take possession of cash, funds and realizable or negotiable securities which are strictly the property of the State, depots of arms, supplies, and, in general, movable property of the State of such character as to be useful in military operations.

Institute, 1880, p. 36.

Means of transportation (railways, boats, &c.), as well as land telegraphs and landing-cables, can only be appropriated to the use of the occupant. Their destruction is forbidden, unless it be demanded be military necessity. They are restored when peace is made in the condition in which they then are.

Institute, 1880, p. 36.

Means of transportation (railways, boats, &c.), telegraphs, depots of arms and munitions of war, although belonging to companies or to individuals, may be seized by the occupant, but must be restored, if possible, and compensation fixed when peace is made.

Institute, 1880, p. 37.

When title to personal property passes.

All implements of war, military and naval stores, and in general, all *moveable* property, belonging to the hostile state, is subject to be seized and appropriated to the use of the captor. And the title to such personal or moveable property is considered as lost to the original proprietor, as soon as the captor has acquired a firm possession; which, as a general rule, is considered as taking place after the lapse of twenty-four hours; so that, immediately after the expiration of that time, it may be alienated to neutrals as indefeasible property.

Halleck, p. 451.

State property which is not liable to seizure.

There is one species of moveable property belonging to a belligerent state which is exempt, not only from plunder and destruction, but also from capture and conversion, viz.: state papers, public archives, historical records, judicial and legal documents, land titles, etc., etc. While the enemy is in possession of a town or province, he has a right to hold such papers and records, and to use them in regulating the government of his conquest; but if this conquest is recovered by the original owner during the war, or surrendered to him by the treaty of peace, they should be returned to the authorities from whom they were taken, or to their successors. Such documents adhere to the government of the place or territory to which they belong, and should always be transferred with it. None but a barbarous and uncivilized enemy would ever think of destroying or withholding them. The reasons of this rule are manifest. Their destruction would not operate to promote, in any respect, the object of the war, but, on the contrary, would produce an animosity and irritation which would extend *beyond* the war. It would inflict an unnecessary injury upon the conquered without any benefit to the conqueror. Moreover, such archives, records, and papers, often constitute the basis and evidence of private property, and their destruction would be a useless destruction of private property; in other words, it would be an injury done in war beyond the necessity of war, and, therefore, illegal, barbarous, and cruel. The same reasons

apply to carrying them off and withholding them from their proper owners and legitimate use.

Halleck, p. 453.

Debts due to the state.

We will next consider the effect of a military occupation of a state upon debts owing to its government. Does such conquest of the state carry with it the incorporeal rights of the state, such as debts, etc.? In other words, do these rights so attach themselves to the territory that the military possession of the latter carries with it the right to possess the former? There are two distinct cases here to be considered; *first*, where the *imperium* of the conqueror is established over the *whole state*, (*victoria universalis;*) and *second*, where it is established over only a *part*, as the capital, a province, or a colony (*victoria particularis.*) As has already been stated, all rights of military occupation arise from *actual possession*, and not from constructive conquests; they are *de facto*, and not *de jure* rights. Hence, by a conquest of part of a country, the government of that country, or the *state*, is not in the possession of the conqueror, and he, therefore, cannot claim the incorporeal rights which attach to the whole country as a *state*. But, by the military possession of a part, he will acquire the same claim to the incorporeal rights which attach to that part as he would, by the military occupation of the whole, acquire to those which attach to the whole. We must also distinguish with respect to the situations of the debts, or rather the locality of the debtors from whom they are owing, whether in the conquered country, in that of the conqueror, or in that of a neutral. If situated in the conquered territory, or in that of the conqueror, there is no doubt but that the conqueror may, by the rights of military occupation, enforce the collection of debts actually due to the displaced government, for the *de facto* government has, in this respect, all the powers of that which preceded it. But if situated in a neutral state, the power of the conqueror, being derived from force alone, does not reach them, and he cannot enforce payment. It rests with the neutral to decide whether he will, or will not, recognize the demand as a legal one, or, in other words, whether he will regard the government of military occupation as sufficiently permanent to be entitled to the rights of the original creditor. He owes the debt, and the only question with him is, who is entitled to receive it? In deciding this question he will necessarily be determined by the particular circumstances of the case, and will probably delay his action till all serious doubts are removed.

If the debt, from whomsoever owing, be paid to the government of military occupation, and the conquest is afterward made complete, no question as to the legality of the payment can subsequently arise. But should the former sovereign or government, after a lapse of time, be restored, and the debtor has received his discharge, may the original creditor demand a second payment? The burthen of proof, in such a case, lies upon the debtor; and in order to render the payment valid, and make it operate as a complete discharge of the debt, he must show: 1st, that the sum was actually paid, for an acquittance or a receipt, without actual payment, is no bar to the demand of the original creditor; 2d, that the debt was actually due at the time when it was paid; 3d, that the payment has not been delayed by a *mora* on the part of the debtor, which had thus operated to defeat the claim of

the original creditor. If the debtor be a citizen of the conquered country, or a subject of the conqueror, he must also show: 4th, that the payment was compulsory—the effect of a *vis major* upon the debtor—not necessarily extorted by the use of physical force, but paid under an order, the disobedience of which was threatened with punishment. If the debtor be a neutral or stranger, he cannot plead compulsion as a justification of his making payment to the conqueror, but he must also show: 5th, that the constitutional law of the state recognized the payment, as made by him, to be valid; in other words, that it was made in good faith, and to the *de facto* authority authorized by the fundamental laws to receive it. It is not a necessary condition, but it is a substantive defense against the original creditor, that the money has been applied to his benefit; thus, in the case of a state creditor, if the money has been applied to the benefit of the state—if there has been what the civilians term a *versio in rem*—the payment will be regarded as valid.

Halleck, pp. 804–806.

State property which may not be seized.

It is the tendency of States, in all systems of government, to treat the transfer of corporeal movable property—what the Common Law calls *chattels*—as far as possible, as giving the full title to the possessor. The simple and severe rules of war take the same direction. The belligerent occupant is treated as acquiring a complete title to all corporeal movables of the hostile State which come under his actual control. He may, by leaving them behind him, and by their coming back to the possession of the former State, lose his title; but, if he has perfected it by actual possession and the exercise of his right of confiscation, they are his; and the former State takes them, if at all, as a recapture, for its own benefit, by a new title. All incorporeal rights in movables follow the fortune of the movables. They pass to the conqueror, if they are rights; and, as far as they are servitudes or liens, the conqueror takes the things purged of the servitudes or liens.

There are some kinds of public movable property the right to transfer which has been a good deal questioned; that is, collections of works of art, science, natural history, and libraries. This subject is treated in the text, *infrà*, §§352–354; and note 170, *infrà*, on the Restitution of the Collections at the Louvre. As to State papers, public archives, historical records, judicial and legal documents, &c., all publicists seem agreed that they should neither be destroyed nor removed. They are not of commercial, exchangeable value; their destruction does not aid belligerent operations; they are necessary to the proofs of private rights; and are, in fact, adherent to the local government. (Halleck's Intern. Law, 543. Lieber's Polit. Ethics, p. 7, §15. Kent's Comm. i. 92. Heffter's Europ. Völker. §130, 131.)

Dana's Wheaton, p. 438, note 169.

When title to personal property passes.

The title to property lawfully taken in war may, upon general principles, be considered as immediately divested from the original owner, and transferred to the captor. This general principle is modified by the positive law of nations, in its application both to personal and real property. As to personal property, or movables, the title is,

in general, considered as lost to the former proprietor, as soon as the enemy has acquired a firm possession; which, as a general rule, is considered as taking place after the lapse of twenty-four hours, or after the booty has been carried into a place of safety, *infra praesidia* of the captor.

Dana's Wheaton, pp. 454–456.

The rule is now well established, that while all public moneys, military stores, and buildings are lawful plunder, [while all telegraph and railway property can be pressed into the captor's service,] and while every edifice in the way of military movement,—whether, indeed, public or private,—may be destroyed, whatever does not contribute to the uses of war ought to remain intact.

Woolsey, p. 222.

Debts due to the state.

As a general rule the movable property of the state may be appropriated. Thus a belligerent seizes all munitions of war and other warlike materials, ships of war and other government vessels, the treasure of the state and money in cheques or other instruments payable to bearer, also the plant of state railways, telegraphs, &c. He levies the taxes and customs, and after meeting the expenses of administration in territory of which he is in hostile occupation, he takes such sum as may remain for his own use.

So far there is no question. A belligerent either seizes property already realized and in the hands of the state, or property which he may perhaps be considered to appropriate under a sort of mixed right, of which it is difficult to disentangle the elements, partly as moneys belonging to the state when they accrue due, and partly as private property appropriated according to a scale conveniently supplied by the amount of existing taxation. It is, no doubt, unsatisfactory to explain thus the latter kind of appropriation; and it probably can only be accounted for logically by adopting an inadmissible doctrine which will be discussed under the head of military occupation. The practice however is settled in favor of the belligerent.

But can he go further? Can he substitute himself for the invaded state, and appropriate moneys due upon bills or cheques requiring endorsement, or upon contract debts in any other form?

Seizure in such case might not be direct; it might have to be enforced through the courts, and possibly through the courts of a neutral state; seizure also would not be effected once for all; upon the question of its validity or invalidity would depend whether the invaded state could demand a second payment at a future time. The matter is therefore one of considerable importance. The majority of writers, it would seem, consider funds in the shape contemplated to be amongst those which a belligerent can take. The arguments of M. Heffter and Sir R. Phillimore in a contrary sense appear however to be unanswerable. According to them, incorporeal things can only be occupied by actual possession of the subject to which they adhere. When territory is occupied, there are incorporeal rights, such as servitudes, which go with it because they are inherent in the land. But the seizure of instruments or documents representing debts has not an analogous effect. They

are not the subject to which the incorporeal right adheres; they are merely the evidence that the right exists, 'or, so to speak, the title deeds of the obligee.' The right itself arises out of the purely personal relations between the creditor and the debtor; it adheres in the creditor. It is only consequently when a belligerent is entitled to stand in the place of his enemy for all purposes, that is to say, it is only when complete conquest has been made and the identity of the conquered state has been lost in that of the victor, that the latter can stand in its place as a creditor, and gather in the debts which are owing to it.

Hall, pp. 435–437; Heffter, sec. 134; Phillimore, pt. xii, ch. iv.

Legal documents and state papers.

It is also forbidden to seize judicial and other legal documents or archives and state papers, except, in the last case, for specific objects connected with the war. The retention of such documents is generally of the highest importance to the community to which they belong, but the importance is as a rule rather of a social than of a political kind; their possession by an invader, save in the rare exception stated, is immaterial to him; their seizure therefore constitutes a wanton injury.

Hall, p. 438.

Booty.

Booty consists in whatever can be seized upon land by a belligerent force, irrespectively of its own requirements, and simply because the object seized is the property of the enemy. In common use the word is applied to arms and munitions in the possession of an enemy force, which are confiscable as booty, although they may be private property; but rightly the term includes also all the property which has hitherto been mentioned as susceptible of appropriation.

Hall, p. 453.

Receipts desirable.

The occupying army may not only "take possession" (*Saisir*) of the things mentioned, but may also confiscate them for the benefit of its own Government absolutely. It must, however, be observed that some forms of property, nominally belonging to the State, e. g. the funds of savings banks, may be in reality private property, under State management.

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Although no receipt is here required to be given, something of the sort is obviously desirable, with a view to subsequent compensation. The Treaty of Peace must settle upon whom the burden of making compensation is ultimately to fall.

Holland, p. 57.

Ships seized in part by troops.

This paragraph which deals with the property which an army of occupation may appropriate is based on a proposal made by the Austro-Hungarian delegate. His proposition was to add to the paragraph referring to the means of transport the words "*sur terre, sur mer et dans les airs.*" The *Comité de rédaction* proposed a new para-

graph enumerating various modes of transport, but the Committee thought it advisable not to make a specific enumeration owing to the dangers of incompleteness. A general formula which did not lend itself to any ambiguity was thought preferable, and this was adopted. The military delegate of Japan raised the question of the appropriateness of including means of transport by sea in regulations for land warfare, but the Committee considered it advisable to retain the words "*sur mer*" as the right of maritime capture was applicable in land warfare in the case of ships seized in a port by a body of troops, especially as regards those destined for river navigation.

Higgins, p. 270.

Railways.

This article [53] was intended to be only a reproduction of the existing usage—of the rule that private property on land is liable to seizure, but not to confiscation. It therefore sets out a principle which is not only applicable as between signatories, but also as between signatories and non-signatories.

The belligerent invader has a general right, under the existing practice, of seizure of whatever he in his discretion may consider necessary for the purpose of breaking the power of the enemy. Railways are, for obvious reasons, extremely useful to belligerents, and in many cases have determined the course of hostilities. The invading commander is therefore entitled to take possession of the rolling stock, stations, and the whole of the railway administration, without distinction as to whether the railways belong to the invaded State or to private companies. Where the railways belong to the State, the owner is displaced by the invading State. When they belong to private companies, the general rules of warfare, applying to private property within the invaded State, are followed. That is to say, that the right to take does not imply the right to take without payment.

In fact, under the existing usage there is no difference of qualified opinion as to the right of the invading belligerent to make use of the railways belonging to private companies, nor as to the right of private companies to receive back the property undiminished or with indemnity for what may be wanting.

In the war of 1870–1871, the German army took possession of the Eastern, Northern, Orleans and Paris-Lyons-Mediterranean Railways, and during their occupation of them the German authorities received the proceeds of the traffic. After the conclusion of peace, a mixed commission was appointed to settle the sum to be returned to the companies, which also re-entered into possession of their rolling and other stock.

Barclay: Problems of international practice and diplomacy, p. 45.

Moveable public enemy property may certainly be appropriated by a belligerent provided that it can directly or indirectly be useful for military operations. Article 53 of the Hague Regulations unmistakably enacts that a belligerent occupying hostile territory may take possession of the cash, funds, realisable securities, depots of arms, means of transport, stores, supplies, appliances on land or at sea or in the air adapted for the transmission of news or for the transport of persons or goods, and of all other moveable property of the hostile

State which may be used for military operations. Thus, a belligerent is entitled to seize not only the money and funds of the hostile State on the one hand, and, on the other, munitions of war, depots of arms, stores and supplies, but also the rolling-stock of public railways and other means of transport and everything and anything he can directly or indirectly make use of for military operations. He may, for instance, seize a quantity of cloth for the purpose of clothing his soldiers.

Oppenheim, vol. 2, p. 176.

Property found on the battlefield.

And it must be specially observed that the restriction of article 53 of the Hague Regulations according to which only such moveable property may be appropriated as can be used for the operations of war, does not find application in the case of moveable property found on the battlefield, for article 53 speaks of "an army of occupation" only. Such property may be appropriated, whether it can be used for military operations or not; the mere fact that it was seized on the battlefield entitles a belligerent to appropriate it.

Oppenheim, vol. 2, p. 178.

Receipts for private property seized.

All kinds of private moveable property which can serve as war material, such as arms, ammunition, cloth for uniforms, leather for boots, saddles, and also all appliances, whether on land or at sea or in the air, which are adapted for the transmission of news or for the transportation of persons and goods, such as railway rolling-stock, ships, telegraphs, telephones, carts, and horses, may be seized and made use of for military purposes by an invading belligerent, but they must be restored at the conclusion of peace, and indemnities must be paid for them. This is expressly enacted by article 53 of the Hague Regulations. It is evident that the seizure of such material must be duly acknowledged by receipt, although article 53 does not say so; for otherwise how could indemnities be paid after the conclusion of peace? As regards the question who is to pay the indemnities, Holland (War, No. 113) correctly maintains that "the Treaty of Peace must settle upon whom the burden of making compensation is ultimately to fall."

Oppenheim, vol. 2, p. 180.

Captured state property.

Such state property as arms, stores, and munitions of war, found in a captured camp or fort, or on a battlefield, belongs to the government of the victors.

Lawrence, p. 430.

"Realizable securities."

With certain exceptions which will be stated immediately, movables belonging to the invaded state may be appropriated by the invader. Firm possession gives him a title to the things themselves, and not merely to the use of them. This rule applies first and foremost to "depots of arms, means of transport, stores and supplies, and generally all movable property belonging to the state which may be used

for military operations." But it also covers "the cash, funds, and realizable securities" of the government. The exact meaning of the ambiguous term "realizable securities" (*valeurs exigibles*) has been much discussed among jurists. Probably a security would not be accounted realizable unless it were capable of being converted into money as it existed at the moment of seizure.

Lawrence, p. 438.

Vessels seized by troops.

Movable property belonging to the non-combatant population of occupied districts may not be seized unless it takes the form of arms, war material, appliances adapted for the transmission of news or for the transport of persons or goods, whether on land, at sea, or in the air. Even in these cases it must be restored at the conclusion of peace, and indemnities must be paid for it. The heads given above include wireless telegraphy apparatus, aeroplanes and dirigible balloons and the rolling stock of railways, when owned by individuals or companies. The reference to means of transport at sea was put into the text of the Regulation from which it is taken in order to deal with vessels seized by troops when in port or engaged in river navigation; for these come under the laws of land warfare. Ordinary cases of capture at sea were excluded by the phrase "apart from cases governed by maritime law." The question of the source of the indemnities to be paid at the conclusion of the war for the temporary use of the articles that we are considering was left unsettled. No doubt, as Professor Holland remarks, "the treaty of peace must settle on whom the burden of making compensation is ultimately to fall."

Lawrence, p. 441; Holland, Laws of War on Land, p. 57.

The opening provision of H LIII is so worded as to exempt from seizure both, first, cash, funds and realisable securities of which the state is only custodian, such as savings bank fuuds, and secondly, debts due to the state not falling under the description of realisable securities. The first exemption speaks for itself. In the second exemption the original French is *valeurs exigibles*, which Professor Holland translates "realisable securities," and which has been translated officially into German as *eintreibbare forderungen*. Professor Holland describes it as purposely ambiguous, and there are grave differences of opinion as to what the rule on the matter ought to be. There is no doubt that if the occupation should be ripened into conquest, all the debts due to the extinguished state will belong by the laws of state succession to the conqueror and may be sued for by him. There is also no doubt that documents payable to bearer may be seized by an occupant as part of the state treasure, so that he thereby becomes not only their actual but their lawful bearer, and can sue on them as soon as due, whether or not his occupation of the place where they were seized has continued in the mean time or not. But the occupant who is not a conqueror does not represent the person of the enemy state, and therefore, as it seems to me, can supply nothing which remains to be done by the enemy state in order to complete the right to judgment on a debt. If he has seized a document payable to order, he cannot endorse it: if the debt is claimed by any other kind of title, he may have seized the evidence necessary

for proving it but he cannot put himself forward as plaintiff, or use his physical power in the locality to enforce payment. This however is not the modern German view. By an ordinance of 26 November 1870 the Germans required persons who owed payments for timber from the state forests, in what they had established as "the general government of Alsace," to make those payments to their cashiers in the district. And this is approved by no less an authority than Rivier, on the ground that the absence of the relation of debtor and creditor between the person owing and the occupant furnishes an argument valid only from the point of view of private law, it being sufficient from the point of view of public law to say that the occupant exercises the rights of the supreme power in the state, and may therefore compel the payment of matured debts. In these words, if we may venture to say so, there is a confusion between the strongest power in the district, which is certainly that of the occupant, and the supreme, which implies or ought to imply supreme legitimate, power in the state, which is not that of an occupant. It can scarcely be doubted that by *valeurs exigibles* the authors of the Hague code intended matured debts, but it may still be contended that their silence as to any other condition than maturity does not prove that, in denying to an occupant the right to exact debts not matured, they intended to allow him to exact money due to the enemy state from any persons whom he can physically coerce, or on the ground that the consideration for the debt, as timber from a forest, is connected with the occupied district.

The second paragraph of H LIII, in which in 1907 general terms were substituted for an enumeration of the things dealt with, concerns two classes of things belonging to companies or private persons. One class, composed of railway plant, land telegraphs, telephones and ships, consists of things liable indeed to be much deteriorated by rough usage, but which, unlike most things requisitioned, would in general remain in some condition at the end of the war, and which during the war the occupying force would need to keep under its control, as well to prevent their use by the enemy as for its own use from time to time. For these the obvious rule is that they shall be restored at the peace so far as they then exist, and the article adds that the indemnities for them shall be regulated at the peace, a formula which, one step in advance of that employed about receipts in the case of ordinary requisitions, seems to admit that there is a liability somewhere but does not fix it on either side. As to this class, H LIII in 1899 repeated B VI with the addition of telephones. The other class of things consists of depôts of arms and generally all kinds of munitions of war, as to which there is the same necessity for preventing their use by the enemy, but which would not in general continue to exist and have any substantial value after their use by the occupant. B VI enumerated these among means of a nature to be used in the operations of the war, thereby allowing their seizure by the occupant, but did not include them among the things to be restored and the indemnities for them regulated at the peace. The growing respect for private property caused them to be so included in the *Manual* of the Institute of International Law, Art. 55, and they are now so included by H LIII.

Westlake, vol. 2, p. 113.

"It is conceded that all public funds and securities belonging to the government of the country in its own right, and all arms and supplies and other movable property of such government, may be seized by the military occupant and converted to his own use. * * * All public means of transportation, such as telegraph lines, cables, railways, and boats, belonging to the state, may be appropriated to his use, but, unless in case of military necessity, they are not to be destroyed."

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain I. 159.

"Means of transportation, such as telegraph lines and cables, railways and boats, may, although they belong to private individuals or corporations, be seized by the military occupant, but unless destroyed under military necessity are not to be retained."

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, Correspondence relating to War with Spain I. 159.

"The property rights acquired by the seizure as prize of war of the moneys found in the Spanish treasuries in Manila upon that city being occupied by the military forces of the United States belong to the people of the United States in their federated capacity, and the authority to dispose of property so acquired is vested in Congress. Neither the military authorities of the United States nor the officials administering the government of civil affairs in the Philippines are authorized to divest the United States of its title to said property."

Mr. Sanger, Act. Sec. of War, to Mr. Taft, Civil governor of the Philippines, Oct. 15, 1901, Magoon's Reports, 624, 625.

They [the Russian troops] are permitted to take possession of movables belonging to the belligerent state and serving a military purpose, such as money, stores of arms and ammunition, material for dressing wounds, etc.

Beyond this, the troops may take possession of material for railways, telegraphs, telephones, steamboats and other vessels, as also of military stores belonging to companies or to individuals.

Art. 10, Russian Instructions, 1904.

Censorship of press and correspondence.—The military occupant may establish censorship of the press and of telegraphic and postal correspondence. He may prohibit entirely the publication of newspapers, prescribe regulations for their pul lication and circulation and especially in unoccupied portions of the territory and in neutral countries. He is not required to furnish facilities for postal service, but may take charge of them himself, especially if the officials of the occupied district fail to act or to obey his orders.

U. S. Manual, p. 111.

Means of transportations.—The military occupant exercises authority over all means of transportation, both public and private within the occupied district, and may seize and utilize the same and regulate their operation.

U. S. Manual, p. 112.

What included in rule.—The foregoing rule includes everything susceptible of direct military use, such as cables, telephone and telegraph plants, horses, and other draft and riding animals, motors, bicycles, motorcycles, carts, wagons, carriages, railways, railway plants, tramways, ships in port, all manner of craft in canals and rivers, balloons, airships, aeroplanes, depots of arms, whether military or sporting, and in general all kinds of war material.

U. S. Manual, p. 120.

Destruction of such property.—The destruction of the foregoing property and all damage to the same is justifiable if it is required by the exigencies of the war.

U. S. Manual, p. 120.

Two classes of movable property of enemy.—All movable property belonging to the State directly susceptible of military use may be taken possession of as booty and utilized for the benefit of the invader's Government. Other movable property, not directly susceptible of military use, must be respected and can not be appropriated.

U. S. Manual, p. 127.

All means of transportation, public and private, come under the authority of the occupant, and, if he does not seize and utilize them, he may limit their operation.

Edmonds and Oppenheim, art. 376.

For war purposes generally private personal property falls into two categories. The first category comprises all such things as are susceptible of direct military use. These may be seized, but they must be restored at the conclusion of peace, and indemnities must be paid for them. Under this category fall: appliances adopted for the transmission of news by land, sea, or air, such as cables, telegraph and telephone plant; all kinds of transport whether on land, at sea, or in the air, such as horses, motors, bicycles, carts, carriages, railways and railway plant, tramways, ships in port, river and canal craft, balloons, air ships; depots of arms, whether military or sporting; and in general all kinds of war material. No actual stipulation is made in the Hague Rules to oblige the belligerent who effects the seizure to give a receipt, but the fact of seizure should obviously be established in some way, if only to give the owner an opportunity of claiming the compensation expressly provided for.

Edmonds and Oppenheim, art. 415.

Moveable property belonging to the State is, like private property, divided, as regards its treatment, into two categories. Cash, specie, funds, and realizable securities which are strictly the property of the State, and all property directly susceptible of military use, such as means of transport, appliances for the communication of news, depots of arms, stores and supplies, may be taken possession of as booty. The public income and taxes raised in occupied territory may also be disposed of, but in this case the regular expenditure of the administration must be borne by the occupant.

Other movable public property, not directly susceptible of military use, as well as that belonging to the institutions mentioned above which is to be treated as private property, must be respected and cannot be appropriated: for instance, crown jewels, pictures, collections of works of art, and archives, although papers in connection with the war may be seized even when forming part of archives.

Edmonds and Oppenheim, art. 430.

The military authority controls the railways and telegraphs of the enemy's State, but here also it possesses only the right of use and has to give back the material after the end of the war.

German War Book, p. 168.

Movable State property on the other hand can, according to modern views, be unconditionally appropriated by the conqueror.

This includes public funds, arms, and munition stores, magazines, transport, material supplies useful for the war and the like. Since the possession of things of this kind is of the highest importance for the conduct of the war, the conqueror is justified in destroying and annihilating them if he is not able to keep them.

German War Book, p. 169.

The recognition of the inviolability of private property does not of course exclude the sequestration of such objects as can, although they are private property, at the same time be regarded as of use in war. This includes, for example, warehouses of supplies, stores of arms in factories, depots of conveyances or other means of traffic, as bicycles, motor cars, and the like, or other articles likely to be of use with advantage to the army, as telescopes, etc. In order to assure to the possessors compensation from their government, equity enjoins that a receipt be given for the sequestration.

German War Book, p. 171.

The same thing holds good of railways, telegraphs, telephones canals, steamships, submarine cables and similar things; the conqueror has the right of sequestration, of use and of appropriation of any receipts, as against which it is incumbent upon him to keep them in good repair.

If these establishments belong to private persons, then he has indeed the right to use them to the fullest extent; on the other hand he has not the right to sequestrate the receipts. As regards the right of annexing the rolling-stock of the railways, the opinions of authoritative teachers of the law of nations differ from one another. Whilst one section regard all rolling-stock as one of the most important war resources of the enemy's State, and in consequence claim for the conqueror the right of unlimited sequestration, even if the railways belonged to private persons or private companies, on the other hand the other section incline to a milder interpretation of the question, in that they start from the view that the rolling-stock forms, along with the immovable material of the railways, an inseparable whole, and that one without the other is worthless and is therefore subject to the same laws as to appropriation. The latter view in the year 1871 found practical recognition in so far as the rolling-stock captured in large quantities by the Germans on the French

railways was restored at the end of the war; a corresponding regulation was also adopted by the Hague Conference in 1899.

German War Book, p. 184.

Article 53, Annex to Hague Convention IV, 1907, is substantially identical with section 202, Austro-Hungarian Manual, 1913.

The Elector of Hesse Cassel.

This was a case which arose following the conquest of Hesse Cassel by Napoleon and its subsequent loss by him and the question to be decided, which was answered in the affirmative, was whether debts owing to the Elector of that country were validly discharged by a payment to Napoleon and receiving from the latter a receipt in full.

Phillimore's International Law, vol. III, p. 841.

See also the cases arising from the occupation of Naples by Charles VIII, in 1495, Phillimore, vol. III, p. 838.

January 23, 1899, the British banking firm of Smith, Bell & Co., whose principal place of business was at Manila, Philippine Islands, sold by its branch house at Legaspi, island of Luzon, a draft for $100,000, drawn in favor of Mariano Trias, who was custodian of the funds, or treasurer, of the Philippine insurgents. On learning the facts the military authorities of the United States called upon the firm at its Manila office to pay over to them the funds represented by the draft. The firm complied under protest and applied to the British Government to obtain relief. The firm represented that it had, in the island of Luzon, numerous branches where its agents were in the power of the natives, who might compel them by force again to pay the $100,000 if the draft, the original of which was not in the possession of the United States authorities, was presented for payment. It subsequently appeared that the draft, after passing through the hands of several influential Filipinos, came into the possession of a person in Manila, who was informed that if he attempted to collect it, or let it pass out of his possession, his house and lands would be confiscated to the United States.

Advised, that the United States authorities were justified in requiring the bank to pay to them the funds due to the insurgents, and that the right of the United States to do so did not depend upon the possession or surrender of the draft issued by the bank when the money was received by it.

Moore's Digest, vol. 7, pp. 278, 279, citing Magoon's Reports, 261.

DUTIES OF OCCUPANT RESPECTING PUBLIC BUILDINGS, REAL ESTATE, FORESTS, AND AGRICULTURAL LANDS OF HOSTILE STATE.

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.[1]—*Article 55, Regulations, Hague Convention IV, 1907.*

The occupant can only act in the capacity of provisional administrator in respect to real property, such as buildings, forests, agricultural establishments, belonging to the enemy State.

It must safeguard the capital of these properties and see to their maintenance.

Institute, 1880, p. 36.

Of lands and immovable property belonging to the conquered state, the conqueror has, by the rights of war, acquired the use so long as he holds them. The fruits, rents and profits are, therefore, his, and he may lawfully claim and receive them. Any contracts or agreements, however, which he may make with individuals farming out such property, will continue only so long as he retains control of them, and will cease on their restoration to, or recovery by, their former owner.

Halleck, p. 781.

Sale of public lands.

By belligerent occupation, the conqueror has the right to appropriate the use of public lands, and of all incorporeal rights accessory to them. He may confiscate the rents and taxes due, and use these lands in such way as he sees fit. But, as his occupation is subject to the chances of war, so is his title to what he cannot remove and corporeally make his own. He cannot, therefore, give to another a permanent title to public lands. Whoever takes a title from the occupier, takes it subject to the results of the war. If the title is, on its face, complete and permanent, and the war results in a completed and recognized sovereignty of the grantor, the title of the alienee is confirmed, and takes its date from the original grant. As to who may take grants from the belligerent occupier, it is to be observed, that, if a subject of the late sovereign purchases a title, he may be treated by his sovereign as dealing with the enemy, and supplying him with means. Indeed, the purchase is inconsistent with his allegiance. If a neutral private citizen buys a title, he takes it subject to the re-

[1] This article is substantially identical with article 55, Regulations, Hague Convention II, 1899, and with article 7, Declaration of Brussels.

sults of the war. If a neutral State takes a title, the act is considered as so far an abandonment of neutrality. It is an attempt to place the contingent property of one belligerent State out of the reach of the chances of war; and the neutral State cannot assert its title against the original sovereign, if he regain possession, except as a hostile act. (Halleck's Intern. Law, 449–451. Vattel, liv. iii. ch. 13, §198. Kent's Comm. i, 110.) In like manner, a sale of his public lands by the excluded sovereign, while they are under hostile occupation, is only a transfer of his chance of regaining them; and a sale made by him in view of a probable loss of his territory, to defeat the rights of the probable conqueror, may be regarded as a mere stratagem of war, and not as a *bonâ fide* transfer. As to private property in immovables, the occupying power is not considered, in the modern practice of nations, as authorized to confiscate their use and income. He may make such use of them as the necessities of war require, and subject them to taxes and contributions; but the mere fact of military occupation does not work a transfer of the uses or income of private lands, or authorize such a transfer to be, in fact, made.

Dana's Wheaton, pp. 437, 438, note 169.

Benefit of postliminy.

We have seen that a firm possession, or the sentence of a competent court, is sufficient to confirm the captor's title to personal property or movables taken in war. A different rule is applied to real property, or immovables. The original owner of this species of property is entitled to what is called the benefit of postliminy, and the title acquired in war must be confirmed by a treaty of peace before it can be considered as completely valid. This rule cannot be frequently applied to the case of mere private property, which by the general usage of modern nations is exempt from confiscation. It only becomes practically important in questions arising out of alienation of real property, belonging to the government, made by the opposite belligerent, while in the military occupation of the country. Such a title must be expressly confirmed by the treaty of peace, or by the general operation of the cession of territory made by the enemy in such treaty. Until such confirmation, it continues liable to be divested by the *jus postliminii*. The purchaser of any portion of the national domain takes it at the peril of being evicted by the original sovereign owner when he is restored to the possession of his dominions.

Dana's Wheaton, pp. 495, 496.

During the continuance of the war, the conqueror in possession has only a usufructuary right, and the latent title of the former sovereign continues, until the treaty of peace, by its silent operation, or express provisions, extinguishes his title forever.

Dana's Wheaton, pp. 716, 717.

Sale of lands and buildings.

Land and buildings on the other hand may not be alienated. They may perhaps be conceived of as following the fate of the territory, and as being therefore incapable of passing during the continuance of war, though as the immediate property of the state is

distinguishable from the ultimate or eminent property, this view would not be satisfactory; and it is more probable that the custom, which has now become compulsory, originally grew out of the impossibility of giving a good title to a purchaser. Purchase, unlike the payment of taxes, is a voluntary act; the legitimate government therefore in recovering possession is obviously under no obligation to respect a transaction in which the buyer knows that he is not dealing with the true owner.

An occupant may however seize the profits accruing from the real property of the state and may make what temporary use he can of the latter, subject it would seem to the proviso that he must not be guilty of waste or devastation. Thus he can use buildings to quarter his troops and for his administrative services, he receives rents, he can let lands or buildings and make other contracts with reference to them, which are good for such time as he is in occupation, and he can cut timber in the state forests; but in cutting timber, for example, apart from the local necessities of war, he must conform to the forest regulations of the country, or at least he must not fell in a destructive manner so as to diminish the future annual productiveness of the forests.

Hall, p. 437.

Meaning of "usufructuary."

A person is said, in continental systems of law, to be a "usufructuary," or to enjoy a "usufruct," in property in which he has an interest of a special kind, for life or some lesser period. The "rules of usufruct" may be shortly stated to be that the property subject to the right must be so used that its substance sustains no injury.

Holland, p. 59.

Appropriation of public immovables is not lawful so long as the territory on which they are has not become State property of the occupant through annexation. During mere military occupation of the enemy territory, a belligerent may not sell or otherwise alienate public enemy land and buildings, but only appropriate the produce of them. Article 55 of the Hague Regulations expressly enacts that a belligerent occupying enemy territory shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State and situated on the occupied territory; that he must protect the stock and plant, and that he must administer them according to the rules of usufruct. He may, therefore, sell the crop from public land, cut timber in the public forests and sell it, may let public land and buildings for the time of his occupation, and the like. He is, however, only usufructuary, and he is, therefore, prohibited from exercising his right in a wasteful or negligent way that would decrease the value of the stock and plant. Thus, for instance, he must not cut down a whole forest unless the necessities of war compel him.

Oppenheim, vol. 2, p. 174.

With regard to immovables belonging to the invaded state, the occupying belligerent is to consider itself as an administrator and usufructuary only. That is to say, it may use the public lands, buildings, forests, and other real estate, and may take all the rents

and profits arising from them, but may not waste or destroy the things themselves, save under stress of the most urgent military necessity. Thus the troops of the invader may be quartered in public buildings, his administrative services may utilize them for offices, they may be turned into hospitals for his wounded, and even the churches may be taken possession of for purposes connected with the war. But wanton destruction is regarded as an act of barbarity forbidden by the rules of civilized warfare.

Lawrence, p. 436.

Sale and waste forbidden.

The rule that an invader acquires, not the ownership, but only the right to use the public immovables found by him in the occupied territory, carries with it as a necessary consequence the further rule that he may not sell any portion of the state domain that he succeeds in bringing under his control. He may compel the tenants to pay their rents into his military chest, he may lop the forests and work the mines, he may appropriate to himself all ordinary profits; but he may not injure or destroy the *corpus* of the property in question, nor may he attempt to transfer it. Such an attempt was made in 1870 by the German authorities with regard to some thousands of oaks in the state forests of two departments of France then under German military occupation. As the trees were not fit for cutting according to the proper practice of forestry, the act was an act of waste, and the French courts ruled, after the conclusion of the war had restored their authority in the districts in question, that the buyers of the oaks had no legal title.

Lawrence, p. 437; Scott, *Cases on International Law*, p. 674, note.

Thus the troops of the invader may be quartered in public buildings, his administrative services may utilize them for offices, they may be turned into hospitals for his wounded, and even the churches may be taken possession of for purposes connected with the war. But wanton destruction is regarded as an act of barbarity forbidden by the rules of civilized warfare.

Lawrence, p. 437.

Sale of immovables.

With regard to immovables as distinct from their rents and profits, whatever the occupant may express on the face of any document, he can but make over his own chance of retaining what he then holds by the sword. Such a transaction cannot be valid against the sovereign of the country, if his authority is restored during or after the war, but it would bind the occupying sovereign if he afterwards obtained the district by cession or completed conquest. Purchase during the war by a neutral state amounts to an abandonment of neutrality, which the dispossessed belligerent may lawfully resent. If the excluded sovereign sells, he simply parts with his chance of regaining the property; and the conveyance, though valid as against him, would have no force to bind the invading state should its occupation ripen into full ownership.

Lawrence, pp. 437, 438.

Immovable property, which comprises the real property and leaseholds for years of English law, whether belonging to the state or to private persons, cannot be appropriated by an occupant. If it belongs to private owners, they or their agents remain on the spot for its management, subject to such interference as military necessity may require; but if it belongs to the state the duty of its management is almost necessarily thrown on the invader, and he is entitled to the profits, as well for his remuneration and an inducement to good management as because, so far as they are in tangible shape, he can seize them like any other corporeal movable property of the enemy state. Perhaps too the confusion of occupation with conquest has left some trace on the relation of the occupant to public immovables, and caused him to be regarded as their temporary owner. But, whatever the explanation, there is no doubt that the occupant is entitled to get in the rents and dues of public immovables maturing during the occupation, and that his receipt for them will be a good discharge as against the enemy state, whatever opinion may be held on the general question of an occupant's right to enforce payment to him of debts due to that state. If the sovereign of the invaded state owns immovables in his private capacity, there is the same necessity for their management by the occupant, who cannot be expected to discriminate between the agents of the sovereign in his private and in his political capacity, but it may be presumed that the respect now paid to private property would cause him to account for the proceeds at the peace.

In the case of forests, the right of a usufructuary is to cut the trees which regularly come to cutting, during his tenancy; and this right the occupant has, subject to the condition that those who buy the timber from him must remove it during the continuance of the occupation, for the restored government would not be bound to allow its removal. And if the occupant sells timber which has not regularly come to cutting, the courts of the legitimate government will give no effect to any claims founded on such an illegal transaction. In the case of public buildings, their furniture is considered as belonging to them, so that it must not be carried off, independently of the protection given to objects of art by H LVI.

Westlake, vol. 2, pp. 119, 120; *Guerin's case*, court of Nancy, 27 August 1872, Dalloz, 1872, ii. p. 185, and 1 Clunet 126; *Mohr et Haas c. Hatzfeld*, Nancy, 3 August 1872, and Court of Cassation, 16 April 1873, Dalloz, 1872, ii. p. 229, and 1 Clunet 181.

The real property of the state he [the military commander of the occupied territory] may hold and administer, at the same time enjoying the revenues thereof, but he is not to destroy it save in the case of military necessity.

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba, by the American forces, Correspondence relating to War with Spain, I. 159.

What occupant may do with such property.—The occupant does not have the absolute right of disposal or sale of enemy's real property. As administrator or usufructuary he should not exercise his rights in such wasteful and negligent manner as to seriously impair its value. He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. A lease or contract should not extend beyond the conclusion of the war.

U. S. Manual, p. 125.

Real property belonging to the State which is essentially of a civil or non-military character, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged unless its destruction is imperatively demanded by the exigencies of war. The occupant becomes the administrator and usufructuary of the property, but he must not exercise his rights in such a wasteful or negligent way as will decrease its value, for he has not the absolute right of disposal or sale.

Edmonds and Oppenheim, Art. 427.

While the occupier has a right to collect revenues from Government property situated within occupied territory, he shall be under obligation to preserve the property itself and not to abuse his enjoyment of the property by committing acts of deterioration thereon.

Jacomet, p. 83.

Immovable State property is now no longer forfeited as booty; it may, however, be used if such use is in the interests of military operation, and even destroyed, or temporarily administered.

German War Book, p. 168.

The Military Government by the army of occupation is only a Usufructuary *pro tempore*. It must, therefore, avoid every purposeless injury, it has no right to sell or dispose of the property.

German War Book, p. 168.

In the administration of the State forests, it is not bound to follow the mode of administration of the enemy's Forest authorities, but it must not damage the woods by excessive cutting, still less may it cut them down altogether.

German War Book, p. 168.

Thus the domains, forests, woodlands, public buildings and the like, although utilized, leased, or let out, are not to be sold or rendered valueless by predatory management.

German War Book, p. 184.

Article 55, Annex to Hague Convention IV, 1907, is substantially identical with section 203 Austro-Hungarian Manual, 1913.

Mohr and Haas v. Hatzfeld, Dalloz, 1872, II, p. 229.

In this case it was held that military occupation confers upon the invader the right to the usufruct and revenues only, of the public domain, and that the French Courts would not recognize as valid the sale of old trees (during the war of 1870–71) on the public domain, which were reserved at the time of the annual cutting.

Snow's Cases on International Law, pp. 377-379.

OCCUPANT FORBIDDEN TO SEIZE, DESTROY, OR DAMAGE PROPERTY OF MUNICIPALITIES, AND THAT OF INSTITUTIONS OF RELIGION, CHARITY, EDUCATION, ARTS, AND SCIENCES.

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure of, or destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.[1]—*Article 56, Regulations, Hague Convention IV, 1907.*

If (which is not to be expected, and which God forbid) war should unhappily break out between the two republics, they do now, with a view to such calamity, solemnly pledge themselves to each other and to the world to observe the following rules; absolutely where the nature of the subject permits, and as closely as possible in all cases where such absolute observance shall be impossible: * * *

Upon the entrance of the armies of either nation into the territories of the other. * * * All churches, hospitals, schools, colleges, libraries, and other establishments for charitable and beneficent purposes, shall be respected, and all persons connected with the same protected in the discharge of their duties, and the pursuit of their vocations.

Treaty of Peace, Friendship, Limits and Settlement between the United States and Mexico, concluded February 8, 1848, Article XXII.

The property of municipalities, and that of institutions devoted to religion, charity, education, art and science, cannot be seized.

All destruction or wilful damage to institutions of this character, historic monuments, archives, works of art, or science, is formally forbidden, save when urgently demanded by military necessity.

Institute, 1880, pp. 36, 37.

Transfer of municipal property.

As military occupation produces no effect, (except in special cases, and in the application of the severe right of war, by imposing military contributions and confiscations) upon private property, it follows as a necessary consequence, that the ownership of such property may be changed during such occupation, by one belligerent of the territory of the other, precisely the same as though war did not exist.

[1] This article is substantially identical with article 56, Regulations, Hague Convention II, 1899, and with article 8, Declaration of Brussels.

The right to alienate is incident to the right of ownership, and unless the ownership be restricted or qualified by the victor, the right of alienation continues the same during his military possession of the territory in which it is situate, as it was prior to his taking the possession. A municipality or corporation, has the same right as a natural person to dispose of its property during a war, and all such transfers are, *prima facie*, as valid as if made in time of peace. If forbidden by the conqueror, the prohibition is an exception to the general rule of public law, and must be clearly established.

Halleck, p. 789.

But by the modern usage of nations, which has now acquired the force of law, temples of religion, public edifices devoted to civil purposes only, monuments of art, and repositories of science, are exempted from the general operations of war.

Dana's Wheaton, pp. 431, 432.

Works of art.

The invasion of France by the allied powers of Europe, in 1815, was followed by the forcible restitution of the pictures, statues, and other monuments of art, collected from different conquered countries during the wars of the French revolution, and deposited in the museum of the Louvre.

It is not, however, understood that the allies treated these works of art as trophies of war to themselves, which they, as possessors, restored to the former owners; but that they required France to restore them as unjustifiably taken from the owners. Doubtless, a completed conquest—by which the conquering dissolves and succeeds to the conquered sovereignty on its own soil, the former ceasing to exist—carries with it the title to public works of art, movable and immovable. But the question is, whether the temporary belligerent occupation of a conquered country, whose separate sovereignty is not obliterated, gives the right to the conqueror to take and carry away to his own dominions public works of art, either by direct seizure, or through the compulsion of military requisitions and forced contributions. Anglican and Gallican bias has disturbed this question with neutrals, as well as between the parties. It cannot but be hoped, however, that such works will be ever treated as out of the category of trophies of war. They are not necessary nor useful for military operations; nor are they taken *bona fide* in lieu of money contributions, to be turned into money; nor does their capture coerce or restrict the military power of the enemy; and whatever is not so necessary, and does not so coerce, should be spared to the belligerent nationality, if possible. It is not a justifiable object in making war, nor a justifiable object in concluding terms of peace with a conquered nation, to enrich ourselves and impoverish our neighbor. Indemnity and security are the tests. To strip a conquered belligerent, whose sovereignty we recognize and permit to continue, of works of art,—the instructors and civilizers, as well as the just pride, of the nation,—simply to transfer those advantages to ourselves, clear of all political question of indemnity or security, and of the avowed objects and purposes of the war, is a course which the enlightened and liberal civilization of modern times ought to denounce. Whether

all the allies were blameless in their own action in similar cases, and whether the sovereigns to whom those works of art were restored were entitled to sympathy, or, indeed, the fit representatives of the nations to whom the works belonged,—these are not questions of international law, but of history. The proposition of international law is this: when a nation has conquered in a war, which must be presumed to have had justifiable political purposes, and has secured those purposes, together with indemnity for the past and security for the future, and is about to leave the conquered nation an independent sovereign, on its former territory, can it also, as mere trophies or spoils of war, carry away all the public and national works of art? Is that one of its *rights*, which it may assert without treaty to that effect? It seems as if the fair statement of the proposition carried the inevitable answer.

Dana's Wheaton, p. 447, and note 170.

The rule is now well established, that while all public moneys, military stores, and buildings are lawful plunder, [while all telegraph and railway property can be pressed into the captor's service,] and while every edifice in the way of military movements,—whether, indeed, public or private,—may be destroyed, whatever does not contribute to the uses of war ought to remain intact.

Woolsey, p. 222.

From the operation of this general right to seize either the totality, or the profits, of property according to its nature are excluded property vested in the state but set permanently apart for the maintenance of hospitals, educational institutions, and scientific or artistic objects, and also the produce of rates and taxes of like kind levied solely for local administrative purposes.

Hall, p. 438.

Art works, manuscripts, etc.

Although the matter is sometimes treated as being open to doubt, there seems to be no good ground for permitting the appropriation of works of art or the contents of museums or libraries. If any correspondence ought to exist between the right of appropriation and the utility of a thing for the purposes of war, it is evident that the objects in question ought to be exempted. There is besides a very persistent practice in their favor; though it must be admitted that the major part of that practice has been prompted by reasons too narrow to support a rule of exemption as things are now viewed. During the eighteenth century works of art and the contents of collections were spared, as royal palaces were spared, on the ground of the personal courtesy supposed to be due from one prince to another. Museums and galleries are now regarded as national property. The precedents afforded by last century are consequently scarcely in point. But usage has remained unchanged. Pictures and statues and manuscripts have not been packed in the baggage of a conqueror, except during the campaigns of the Revolution and of the first French Empire. The events which accompanied the conclusion of peace in 1815 were not of a kind to lend value to the precedents which those campaigns had created. The works of art

which had been seized for the galleries of Paris during the early years of the century were restored to their former owners; and Lord Castlereagh in suggesting their restoration by a note addressed to the ministers of the allied powers on September 11, 1815, pointed out that it was a duty to return them to the countries to which 'they of right belonged,' and stigmatised the conduct of France as 'a reproach to the nation by which it has been adopted.' A restoration effected in consequence of this note may be taken to be a solemn affirmation of the principle of exemption by all the great powers except France; and if the language of the Declaration on the laws of war proposed at the Conference of Brussels was somewhat ambiguous, the discussion reported in the Protocols shows that it was not wished to reserve a right of carrying off works of art, but to subject them to the momentary requirements of military necessity.

Hall, pp. 438–440; De Martens, ii. 632–50.

He [the invader] is even bound to protect public buildings, works of art, libraries, and museums.

Hall, p. 500.

"Property of municipalities."

Under "property of localities" might come, e. g., town-halls, waterworks, gasworks, or police-stations.

Holland, p. 59.

It must, however, be observed that the produce of such public immoveables only as belong to the State itself may be appropriated, but not the produce of those belonging to municipalities or of those which, although they belong to the hostile State, are permanently set aside for religious purposes, for the maintenance of charitable and educational institutions, and for the benefit of art and science. Article 56 of the Hague Regulations expressly enacts that such property is to be treated as private property.

Oppenheim, vol. 2, p. 175.

Archives.

But exceptions similar to those regarding the usufruct of public immoveables are valid in the case of the appropriation of public moveables. Article 56 of the Hague Regulations enumerates the property of municipalities, of religious, charitable, educational institutions, and of those of science and art. Thus the moveable property of churches, hospitals, schools, universities, museums, picture galleries, even when belonging to the hostile State, is exempt from appropriation by a belligerent. As regards archives, they are no doubt institutions for science, but a belligerent may nevertheless seize such State papers deposited therein as are of importance to him in connection with the war. The last instances of the former practice are presented by Napoleon I., who seized works of art during his numerous wars and had them taken to the galleries of Paris. But they had to be restored to their former owners in 1815.

Oppenheim, vol. 2, p. 177.

Statues.

On the other hand, works of art and science, and historical monuments may not under any circumstances or conditions be appropriated or made use of for military operations. Article 56 of the Hague Regulations enacts categorically that "all seizure" of such works and monuments is prohibited. Therefore, although the metal of which a statue is cast may be of the greatest value for cannons, it must not be touched.

Oppenheim, vol. 2, p. 180.

Protection not enjoyed during operations of war.

All destruction of and damage to historical monuments, works of art and science, buildings for charitable, educational, and religious purposes are specially prohibited by article 56 of the Hague Regulations which enacts that the perpetrators of such acts must be prosecuted (*poursuivie*), that is courtmartialed. But it must be emphasised that these objects enjoy this protection only during military occupation of enemy territory. Should a battle be waged around an historical monument on open ground, should a church, a school, or a museum be defended and attacked during military operations, these otherwise protected objects may be damaged or destroyed under the same conditions as other enemy property.

Oppenheim, vol. 2, p. 189.

Even the right of user of the occupant is subject to exceptions; for the income derived from lands set apart for the support of "establishments devoted to religion, charity, education, art, and science" should not be diverted from its beneficent purposes to swell the resources of the occupying army.

Lawrence, p. 438.

Modes of acquiring works of art.

During the wars of Revolutionary and Napoléonic France large numbers of valuable pictures and statues were seized by the French armies, and brought home to enrich the collections of Paris. Many more were given up as part of the price of peace by states who were overcome in war. But in 1815 the victorious allies insisted on the restitution of all these works of art to the cities and galleries from which they had been taken. They held that they were undoing a great wrong. The captures, so they argued, were void *ab initio*, and it was their business when they had overcome the wrongdoer to put the true owners in possession again. In reasoning thus they ignored the distinction we have pointed out between the two modes of acquisition. The laws of war, then as now, protected the contents of galleries and museums from seizure by invaders. Such of them as were taken by the French during their belligerent occupation of territories that they had overrun were obtained illegally; and the allies did no more than put the legitimate owners in possession of property that had never ceased to be theirs in law. But those that had been made over by treaty were held by a good title. It is absurd to argue that a victorious belligerent may enforce the transfer of a province, but not a picture, or that peace may be purchased by an indemnity of millions, but not by marbles and mosaics. To take away from France what she had acquired by cession was no act of

police jurisdiction, but a high-handed proceeding which must seek its justification in considerations of public policy. If the welfare of Europe demanded that she should be deprived of Belgium and the Rhenish provinces, it might also demand that the galleries of the Louvre should disgorge the accumulated glories of Western art. This branch of the question must be argued on political and ethical, rather than on jural grounds.

Lawrence, pp. 439, 440.

What "municipalities" include.

All local bodies must be considered as included under communes. The principle of the second paragraph is not new in naval war—see below, p. 158—but it was first extended to land war by B VIII, which H LVI repeats.

Westlake, p. 121.

All churches and buildings devoted to religious worship and to the arts and sciences, and all schoolhouses, are, so far as possible, to be protected, and all destruction or intentional defacement of such places, of historical monuments or archives, or works of science or art is prohibited, save when required by urgent military necessity.

Order of President McKinley to the Secretary of War, July 18, 1898, on the occupation of Santiago de Cuba by the American forces, correspondence relating to War with Spain I. 159.

The capture, destruction, or premeditated injury of property of institutions devoted to purposes of religion, beneficence, education, art and science, as also of historical monuments, are prohibited.

Art. 13, Russian Instructions, 1904.

Authorized treatment of.—The property included in the foregoing rule [Hague Regulation 56, 1907], may be utilized in case of necessity for quartering the troops, the sick and wounded, horses, stores, etc., and generally as prescribed for private property. Such property must, however, be secured against all avoidable injury, even when located in fortified places which are subject to seizure or bombardment.

U. S. Manual, p. 126.

Special exception, however, is made in favour of property belonging to local, that is to say, provincial, county, municipal and parochial authorities. This as well as the property of institutions dedicated to public worship, charity, education, science, and art, such as churches, chapels, synagogues, mosques, almshouses, hospitals, schools, museums, libraries, and the like, must be treated as private property. Troops, sick and wounded, horses, and stores may therefore be housed in buildings of the above character, but such use is only justifiable if it is a military necessity. Any seizure, destruction, or wilful damage to the property of such institutions, or to historic monuments, or works of science and art is forbidden.

Edmonds and Oppenheim, art. 429.

The Rules further order that the perpetrators of the particular offences of seizure, damage or wilful destruction of churches, hospitals, schools, museums, historic monuments, works of art, etc., shall be prosecuted.

Edmonds and Oppenheim, art. 436.

All other movable property shall be respected, for instance, the collections of museums, statues, works of art in general, etc.

Jacomet, p. 82.

On the other hand an exception is made as to all objects which serve the purposes of religious worship, education, the sciences and arts, charities and nursing. Protection must therefore be extended to: the property of churches and schools, of libraries and museums, of almshouses and hospitals.

German War Book, p. 169.

Article 56, Annex to Hague Convention IV, 1907, is substantially identical with section 204, Austro-Hungarian Manual, 1913.

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